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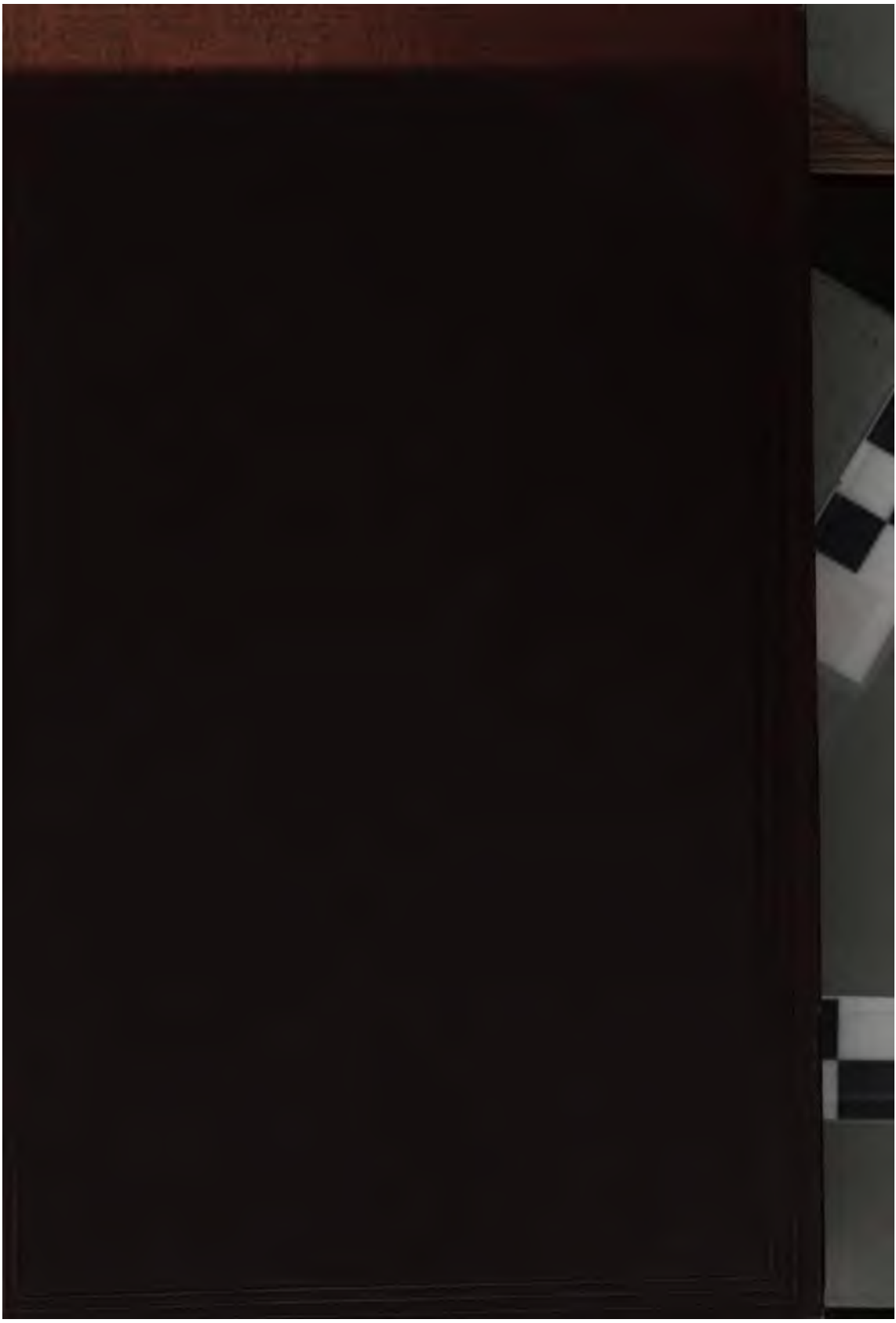

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# CHAPTERS

ON THE

# LAW RELATING TO THE COLONIES

# CHAPTERS

ON THE

# LAW RELATING TO THE COLONIES

TO WHICH ARE APPENDED

## TOPICAL INDEXES

OF

**CASES DECIDED IN THE PRIVY COUNCIL ON APPEAL FROM THE COLONIES, CHANNEL ISLANDS AND THE ISLE OF MAN**

AND OF

***CASES RELATING TO THE COLONIES DECIDED IN THE ENGLISH COURTS OTHERWISE THAN ON APPEAL FROM THE COLONIES***


BY

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AUTHOR OF "BRITISH CONSULAR JURISDICTION IN THE EAST," "A TURKISH GRAMMAR," ETC.


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## PREFACE TO THE SECOND EDITION.

In this Edition the book has been considerably enlarged. The effect of recent decisions has been incorporated in the text. A new section describing the laws conferring Constitutions on those Colonies possessing responsible government has been added to Chapter III. The provisions of some important modern Statutes affecting the Colonies have been set out in Chapters III. and IV.—*e.g.*, the Fugitive Offenders Act (an intra-Imperial Extradition Act) and Orders in Council made thereunder, the Colonial Prisoners Removal Act (creating a system of intercolonial transportation), the Colonial Copyright Act and Orders in Council made thereunder, the Merchant Shipping (Colonial Inquiries) Act, the Colonial Courts of Admiralty Act, the Evidence by Commission Act, the Acts for the ascertainment of British and of Foreign law, &c. The relations set up by the Foreign Jurisdiction Act between the Colonies and Her Majesty's Courts exercising

extra-territorial jurisdiction have been exhibited in Chapter IV. In the same chapter a discussion of the nature and enforcement of colonial judgments has been inserted. And a new Topical Index of cases relating to the colonies decided in English Courts otherwise than on appeal has been added.

The Catalogues of Statutes and the Index of Cases on Appeal have been revised and brought down to date.

C. J. T.

CONSTANTINOPLE, *March*, 1893.

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*** The italicised names in brackets denote Colonies, and that the accompanying Statutes are laws of the respective Colonies.

## ADDENDA.

*P.* 40, *note* 4. On Feb. 2, 1893, the Judicial Committee issued their report on this case, stating that the Royal prerogative extends to the remission of sentences which are merely of a punitive character, inflicted for contempt of Court, that the commission of the Governor of the Bahama Islands vested in him the power to exercise the Royal prerogative in this respect, and that he had therefore power in the circumstances to order the release of Mr. Moseley. See *Times* of Feb. 3, 1893.

P. 214, *note* 1. *Add* reference, 1 Moo. P. C. C., N. S., 315, to Leishman *v.* Cochrane.

P. 308, No. 75 ,, ,, L. R. 6 P. C. 224.

— No. 76 ,, ,, L. R. 3 P. C. 234.

P. 310, No. 90 ,, ,, L. R. 3 P. C. 142.

P. 324, No. 2 ,, ,, L. R. 4 P. C. 144.

P. 334, No. 6 ,, ,, L. R. 3 P. C. 673.

P. 340, Bah. No. 1 ,, ,, L. R. 3 P. C. 218.

## ERRATA.

P. 234, *note* 5. *For* 11 C. B., N. S., *read* 1 C. B., N. S.

P. 287, line 3. *After* 2 Moo. P. C. C., *add* N. S.

# CHAPTERS

ON THE

# LAW RELATING TO THE COLONIES.

## INTRODUCTORY.

### DEFINITION OF A COLONY.



Definition of a colony.

THE British Colonies or Plantations were formerly defined by a writer of authority as remote possessions of this realm, occupied for the purposes of trade or cultivation.[1]

The term "colony" has also been defined in several Acts of Parliament which have been passed for various purposes connected with the colonies,[2] but in each only for the purposes of the particular Act.

No general definition appears to have been enacted in any statute until the year 1889.

In the Act, however, to explain the Foreign Jurisdiction Act[3] British Colonies were made to include any of Her Majesty's possessions out of the

[1] Clark's Colonial Law, 1.

[2] *E.g.* 12 & 13 Vict. c. 96; 18 & 19 Vict. c. 104; 28 & 29 Vict. c. 63; 28 & 29 Vict. c. 113; 31 & 32 Vict. c. 37; 32 Vict. c. 10; 40 & 41 Vict. c. 23.

[3] 28 & 29 Vict. c. 116.

INTRODUCTORY.

Definition of a colony.

United Kingdom. And in the Act to regulate sentences imposed by Colonial Courts where jurisdiction to try is conferred by Imperial Acts[1] the term "colony" was expressly interpreted to include India, but not the Isle of Man[2] or the Channel Islands.[3]

At length by the Interpretation Act of 1889[4] it was enacted that in that and subsequent Acts of Parliament the expression "colony" should mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and that where parts of such dominions were under both a central and a local legislature, all parts under the central legislature should be deemed to be one colony. The same Act[5] enacted that the expression "British possession" should mean any part of Her Majesty's dominions exclusive of the United Kingdom, and that where parts of such dominions are under both a central and a local legislature, all parts under the central legislature should be deemed to be one British possession.

In the Act to enable Her Majesty to provide for the government of her possessions acquired by settlement[6] the expression "British Settle-

[1] 37 & 38 Vict. c. 27.

[2] As to the Isle of Man not being a foreign dominion of the Crown, see *In re Brown*, 33 L. J. Q. B. 193. But it is not within the United Kingdom, *Davison* v. *Farmer*, 6 Ex. 242.

[3] See also 14 & 15 Vict. c. 99, s. 19, compared with 38 & 39 Vict. c. 66, sched.; 23 & 24 Vict. c. 88; 31 Vict. c. 29; and 31 & 32 Vict. c. 37.

[4] 52 & 53 Vict. c. 63, s. 18 (3).

[5] S. 18 (2).

[6] 50 & 51 Vict. c. 54.

ment" is used, and interpreted (s. 6) to mean any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the legislature (constituted otherwise than by virtue of that Act or the Acts thereby repealed) of any British possession: and the expression "British possession" means any part of Her Majesty's possessions out of the United Kingdom.[1]



Definition of a colony.

[1] Cp. 17 & 18 Vict. c. 104 (M. S. A. 1854), s. 2.

# CHAPTER I.

## THE LAWS TO WHICH THE COLONIES ARE SUBJECT.

CHAP. I.

COLONIES are formed either by settlement of an unoccupied or barbarous country, or by conquest or cession from other nations. These different modes of acquisition give rise to corresponding differences in the laws to which a colony becomes subject on its foundation.

### *Section* 1.

Sect. 1. Occupied colonies.

"If there be a new and uninhabited country found out by English subjects, as the law is the birthright of English subjects, so wherever they go they carry their laws with them; and therefore such new-found country is to be governed by the laws of England."[1]

This proposition applies also to settlements made by Englishmen in barbarous countries, where they carry with them not only their laws, but the sovereignty of their own State; and those who live amongst them, and become members of

[1] 2 P. Will. 75; *Blankard* v. *Galdy*, 2 Salk. 411; *May. of Lyons* v. *E. I. Co.*, 1 Moo. P. C. C. p. 272; *Forbes* v. *Cochrane*, 2 B. & C. p. 463; *The Lauderdale Peerage*, L. R. 10 App. 692. As to New South Wales, *vide Catterall* v. *Catterall*, 1 Robert. 580.

their community, become also partakers of and subject to the same laws.[1]

The principle here enunciated is intelligible, convenient, and just, so far as the common law is concerned; and the doctrine is so limited in its expression in some authorities.[2] But inasmuch as English statute law is constantly being added to and altered by fresh enactments, it becomes necessary to consider how far the doctrine is to be understood to extend to that division of the law. Lord Mansfield lays down the rule as follows:[3]—

"No Act of Parliament made after a colony is planted is construed to extend to it without express words showing the intention of the legislature to be that it should."[4]

The proposition is stated more at length by Lord Blackburn in a recent case as follows:[5]—

"When the province of New York was founded by the English settlers who went out there, those English settlers carried with them all the immunities and privileges and laws of England. The Englishmen in a province which had been so settled were as free Englishmen, with as much privilege, as those that remained in England. It is true that it is only the law of England as it was at that time that such settlers carry with them; sub-

[1] *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee*, 2 Moo. P. C. C., N. S., p. 59.

[2] Com. Dig. Ley (C.), *Falkland Islands* v. *The Queen*, 2 Moo. P. C. C., N. S., p. 273.

[3] *R.* v. *Vaughan*, 4 Burr. p. 2500.

[4] Cp. 2 P. Will. 75; *Catterall* v. *Catterall*, 1 Robert. p. 581.

[5] *The Lauderdale Peerage*, L. R. 10 App. p. 744.

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SECT. 1. does not affect their rights unless it is expressly
Occupied colonies. made to extend to the province or the colony."

In some colonial Ordinances and Acts express provision is made as to the time at which the English law to be enforced in the colonies is to be ascertained. Thus in Hong Kong the 5th of April, 1843, is fixed by Ordinance 12 of 1873; in the Falkland Islands the 1st of January, 1850, by Ordinance 2 of 1876; in Fiji the 2nd of January, 1875, by Ordinance 14 of 1875. In Tobago, by an Act of the colonial legislature passed in 1841, it was declared that such parts of the common law and all statutes and parts of the public and general statute law of England, as are or shall be or become applicable and suitable to the circumstances and population of the colony, should be in force in the island.[1] In New South Wales and Van Diemen's Land by 9 Geo. 4, c. 83, s. 24, the Laws and Statutes of England at the time of the passing of the Act (1828) are to prevail,[2] subject to the power of the colonial legislature to repeal any of them.[3] In Upper Canada the laws of England in force on the 15th October, 1792, are to be the rule as to property and civil rights by the Consolidated Statutes of 1859. In British Columbia, by the Ordinance

[1] See *Colonial Bank* v. *Warden*, 5 Moo. P. C. C., 340

[2] Cp. *Godfrey* v. *Poole*, L. R. 13 App. 497; and see *Astley* v. *Fisher*, 6 C. B. 572, and *Devine* v. *Holloway*, 14 M. P. C. C., 290, as to the meaning of this enactment; and *cf. Catterall* v. *Catterall*, 1 Robert. 580; *Whicker* v. *Hume*, 7 H. L. 124; 28 L. J. Ch. 124.

[3] *Harris* v. *Davies*, L. R. 10 App. 279.

to assimilate the general application of English law, No. 7 of 1867, the civil and criminal laws of England as they existed November 19, 1858, and so far as the same are not from local circumstances inapplicable, are and shall be in force in all parts of the colony. But in applying the Ordinance to that part of the colony known as British Columbia before the union with Vancouver's Island, the said civil and criminal laws as the same existed at the date aforesaid shall be held to be modified and altered by all past legislation (of the said colony of British Columbia before the union and of the colony of British Columbia since the union) affecting the said colony of British Columbia as it existed before the union. And similarly as to Vancouver's Island. On the Gold Coast by Ordinance No. 4 of 1876 English law in force on the 24th of January, 1874, is to be observed so far as the limits of local jurisdiction and circumstances permit; but native laws are to be respected as far as possible. And in the Act to grant a Representative Constitution to New Zealand[1] it is provided[2] (re-enacting s. 10 of 9 & 10 Vict. c. 103) that "whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves in all their relations to and dealings with each other, and that particular

[1] 15 & 16 Vict. c. 72. [2] S. 71.

5 & 6 Vict. c. 76, s. 2. Certain districts should be set apart within which such laws, customs, and usages should be so observed: it shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand or in any part thereof in anywise notwithstanding." Some colonies adopt English statutes without alteration, as in the case of the English Acts Act, 1854, of New Zealand, and Law No. 12 of 1855 of Trinidad, introducing all the then recent amendments in the English law of evidence. In such cases, and when the English statute has been authoritatively construed by the Court of Appeal in England, such construction ought to be adopted by the Courts of the colony.[1]

Exception of certain statutes.

English colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony.[2] In inquiring, therefore, if any one of our municipal laws has been introduced into a particular territory acquired by the Crown (by conquest, cession, or settlement), the question may arise whether the

[1] *Trimble* v. *Hill*, L. R. 5 App. p. 344.

[2] 1 Blackst. by Harg. 107; *Kielley* v. *Carson*, 4 Moo. P. C. C. p. 84; *Campbell* v. *Hall*, 20 St. Tr. col. 289; *Freeman* v. *Fairlie*, 1 Moo. Ind. App. p. 323; *Falkland Islands* v. *The Queen*, 2 Moo. P. C. C., N. S., 266; *Colonial Bank* v. *Warden*, 5 Moo. P. C. C. 340; *The Lauderdale Peerage*, L. R. 10 App. p. 745, per Lord Blackburn. And so declared in Fiji by Ordinance 14 of 1875.

law originated out of a purely local policy or not, —was it adapted solely to the mother country in which it was made?[1] Lord Campbell, however, pointed out in *Whicker* v. *Hume*[2] that it is a very difficult thing to decide what laws are adapted to the situation of a colony. The rule was applied in *Maclean* v. *Cristall*[3] to validate a marriage made in India which did not satisfy the condition of the common law as to the presence of a minister in holy orders laid down in *Reg.* v. *Millis*.[4]

The following statutes have been held not to apply to the places named:—

The Mortmain Act, Grenada (a conquered colony), *A.-G.* v. *Stewart*, 2 Mer. 143; New South Wales (a settled colony), *Whicker* v. *Hume*, 7 H. L. 124, where the principle of the exclusion of the Mortmain Act was declared applicable to all colonies; British Honduras, *Jex* v. *McKinney*, L. R. 14 App. 77.

Positive Regulations of Police, Jamaica, *R.* v. *Vaughan*, 4 Burr. 2500.

Statute of Frauds as to devises, Barbadoes, 2 P. Will. 75.

Penal Statutes, Barbadoes, *Dawes* v. *Painter*, Freeman, 175.

[1] *A.-G.* v. *Stewart*, 2 Mer. pp. 159–161; *May. of Lyons* v. *E. India Co.*, 1 Moo. P. C. C. 175; *Yeap Cheah Neo.* v. *Ong Cheng Neo.*, L. R. 6 P. C. 381.

[2] 7 H. L. p. 161.

[3] Perry's Oriental Cases, 75.

[4] 10 C. & F. 534.

Statute of Limitations, Jamaica, *Pitt* v. *Lord Dacre*, L. R. 3 Ch. D. 295.

The Alien Acts, India, *Mayor of Lyons* v. *East India Co.*, 1 Moo. P. C. C. 175.

The Marriage Acts, India, *Lautour* v. *Teesdale*, 8 Taunt. 830.[1]

The Bankrupt Acts, 6 Geo. 4, c. 16, and 2 & 3 Will. 4, c. 114, India, *Clark* v. *Mullick*, 3 Moo. P. C. C. 252; *Cleve* v. *Mills*, see 1 Cooke's Bankrupt Law, 8th ed. by Roberts, 333.[2]

The Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, New Zealand, *Bunny* v. *Hart*, 11 Moo. P. C. C. 189.[3]

Statute of Charitable Uses, Nevis, *Campbell* v. *Hall*, 20 State Tr. col. 289. And see *Bunny* v. *Hart*, 11 M. P. C. C. 189.

The Wills Act, 7 Will. 4 & 1 Vict. c. 26, the Colonies and India, *In re Goods of Foy*, 2 Curt. 328.

On the other hand the rule against perpetuities, which has been recognised as existing in the law of England independently of any statute, was held to have been part of the law of England intro-

[1] The matrimonial law of the colonies, it appears from this case, is identical with that prevailing in England before the first Marriage Act (Lord Hardwicke's, 26 Geo. 2, c. 33), except when it has been regulated by enactments or ordinances of their own municipal law, or by Orders in Council. *Vide Catterall* v. *Catterall*, 1 Robert. 580.

[2] Cp. *Ex parte Blain*, L. R. 12 Ch. D. 522. But see *Ellis* v. *M'Henry*, L. R. 6 C. P. 228, and *Ex parte Rogers*, L. R. 16 Ch. D. 665.

duced into Penang, being considered founded upon considerations of public policy as applicable to the condition of such a place as to England—viz., to prevent the mischief of making property inalienable unless for objects in some way useful to the whole community. And the exception made by the law of England, also on grounds of public policy, in favour of gifts for purposes useful and beneficial to the public, and which, in a wide sense of the term, are called charitable uses, may properly be assumed to have passed with the rule into the law of the colony.[1]

As no ecclesiastical law is required in a colony where there is no established church, the ecclesiastical law of England cannot be treated as part of the law which settlers carry with them from the mother country.[2]

The laws of any colony are to extend to the military forces raised in the colony.[3]

In certain cases Acts of Parliament have been passed to give territorial extension to the operation of English law. Any part of the sea within one marine league of the coast measured from low water mark is to be deemed to be open sea within the territorial waters of Her Majesty's dominions for the purposes of the Territorial Waters Jurisdiction Act, 1878.[4] The Act for the prevention and punishment of offences committed by Her Majesty's

[1] *Yeap Cheah Neo.* v. *Ong Cheng Neo.*, L. R. 6 P. C. p. 394.
[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., 115, 152.
[3] 44 & 45 Vict. c. 58, s. 177. [4] 41 & 42 Vict. c. 73, s. 7.

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subjects within certain territories adjacent to the colony of Sierra Leone[1] recites that the inhabitants of territories adjacent to Sierra Leone extending to the Rio Grande to the North of the colony, to the Rio Gallinas to the South of the colony, and for four hundred miles to the East of the colony, were in an uncivilised state, and that offences against their persons and property were frequently committed by Her Majesty's subjects with impunity. It then enacts[2] that the laws in force at Sierra Leone for the punishment of crimes committed there should be extended to Her Majesty's subjects within any of the territories defined in the preamble; and power is given[3] to the Governors of the colony to appoint magistrates from among the persons residing in the territories in question.

Similar provision for the prevention and punishment of offences by British subjects in territories in S. Africa not within the jurisdiction of any civilised government was made by 26 & 27 Vict. c. 35.[4]

The 34 Vict. c. 8, on the other hand, recites that the inhabitants of certain territories in Africa adjoining Her Majesty's settlements of Sierra Leone, Gambia, Gold Coast, Lagos, and the adjacent protectorates were not within any civilised jurisdiction; and that crimes had been, and were likely to be, committed within such territories against British subjects and persons resident within the

[1] 24 & 25 Vict. c. 31. [2] S. 1. [3] S. 2.

[4] See now the Africa Order in Council, 1889, made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), by which both these Acts may be revoked or varied by Order in Council (see s. 17).

said settlements. It therefore enacts[1] that crimes or offences committed within twenty miles of the settlements or protectorates by Her Majesty's subjects or by persons not subjects of any civilised power against the persons of British subjects or of residents within the settlements should be tried and punished as if committed within the settlements.

The following Acts provide for cases where British subjects are settled in barbarous or desolate countries without having established any legal form of government, or received any constitution from the sovereign.

The British Settlements Act, 1887,[2] repealing 6 & 7 Vict. c. 13 and 23 & 24 Vict. c. 121, after reciting the expediency of extending Her Majesty's power to provide for the government of settlements of her subjects in places not under any civilised government, gives power to Her Majesty in Council to make laws and establish courts, &c., in any British settlement; to delegate such powers to any three or more persons within any such settlement; and to confer on any court in any British possession any jurisdiction that might be conferred on a court in a British settlement over matters occurring or arising there. British settlement is defined in s. 6 of the Act to mean any British possession not acquired by cession or conquest, and not for the time being within the jurisdiction of the legislature, constituted otherwise than by virtue of the Act or

[1] S. 1. [2] 50 & 51 Vict. c. 54.

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any other Act repealed thereby, of any British possession.

By the Foreign Jurisdiction Act, 1890,[1] where a foreign country is not subject to any government from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by that Act (*i.e.*, by treaty, capitulation, grant, usage, sufferance, or other lawful means), Her Majesty shall have jurisdiction over her subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of Her Majesty in a foreign country within the meaning of the other provisions of that Act.[2]

The only law applicable to marriages in such parts of the world was, till very recently, the common law of England as it existed before the Marriage Act,[3] by which, as decided by the House of Lords in the *Queen* v. *Millis*,[4] the presence of a minister in holy orders is essential to the celebration of a valid marriage. In *Maclean* v. *Cristall*[5] the Supreme Court of Bombay laid it down that that requirement was a part of the common law of England that was not introduced into India, because the circumstances of the English residents there made it unsuitable; and decided that a marriage celebrated at Surat by a missionary who was a Congregational minister, when there was no English chaplain resident, was valid. It was, how-

[1] 53 & 54 Vict. c. 37. [2] S. 2. [3] See *ante*, p. 10, n. 1.

[4] 10 C. & F. 534. And *cf. Limerick* v. *Limerick*, 32 L. J. P. M. & A. 92; 4 S. & T. 252.

[5] Perry's Oriental Cases, 75.

ever, found advisable subsequently to pass an Act (14 & 15 Vict. c. 40[1]) to provide for marriages in India. And in *Beamish* v. *Beamish*,[2] in which *Maclean* v. *Cristall* was mentioned, Lord Cranworth, though wishing to guard himself against its being supposed to be clear that the decision in the *Queen* v. *Millis*[3] applied to the case of marriages of necessity entered into when the presence of a minister in holy orders may have been impossible, declared that the question must be considered as still open. In *Armitage* v. *Armitage*[4] the descent of certain property depended upon the question whether a marriage could be presumed to have taken place in New Zealand, before it became a British colony, between a man claiming to be a British subject and a native of New Zealand, according to the customs in force in that country. An inquiry was directed to show what those customs were; but it is clear from the subsequent case of *In re Bethell*[5] that they would not have been allowed by the Court to form a binding marriage tie. That case decided that the union of a domiciled Englishman with a woman of the Barolong tribe in Bechuanaland, S. Africa, according to the customs of the tribe, was not a valid marriage according to the law of England, not having been formed on the

[1] Repealed by Statute Law Revision Act, 1875, except s. 22. The Indian Christian Marriage Act, XV. of 1872, is now the law regulating the marriages of European British subjects in India, and among other things validates marriages solemnised by any minister of religion licensed thereto under the Act.

[2] 9 H. L. p. 348.

[3] 10 C. & F. 534.

[4] L. R. 3 Eq. 343.

[5] L. R. 38 Ch. D. 220.

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same basis as marriages throughout Christendom, and not being in its essence the voluntary union for life of one man and one woman to the exclusion of all others. And in *Swift* v. *Kelly*[1] Lord Brougham gave utterance to a dictum that the rule of the *lex loci* (that a foreign marriage valid according to the law of the country where it is celebrated is good everywhere) prevails only within the pale of Christianity. It has been held that the rule does not apply to polygamous countries.[2]

Now by the Foreign Marriage Act, 1892,[3] ss. 12, 21 (1 *e*, *f*), 22, marriages may be solemnised between parties of whom one at least is a British subject[4] before any person appointed by a Secretary of State in pursuance of the marriage regulations made under the Act[5] to act in the place of a high commissioner or resident whether within or outside of Her Majesty's dominions,[6] or on board one of Her Majesty's ships on a foreign station[7] by or before the commanding officer or other authorised person.[8]

In *Brinkley* v. *Attorney-General*[9] it was laid down that the phrases "Christian marriage," "marriage in Christendom," or equivalent phrases used in judgments given on the subject of marriage, had only been used for convenience to express

[1] 3 Knapp, p. 278.

[2] *Hyde* v. *Hyde and Woodmansee*, L. R. 1 P. & D. 130; and *In re Bethell*, L. R. 38 Ch. D. 220.

[3] 55 & 56 Vict. c. 23.

[4] S. 1.

[5] S. 21.

[6] S. 11 (2 *c*).

[7] S. 12.

[8] S. 21 (1 *e*, *f*).

[9] L. R. 15 P. D. 76.

the idea that the only marriage recognised in Christian countries and in Christendom is marriage of one man and one woman, to the exclusion of all others; and that, as a Japanese marriage is a marriage of that character, a valid marriage could take place in Japan between an Englishman and a Japanese woman according to the law of Japan, which would be a valid marriage in England and everywhere else.

Her Majesty is also empowered by the Foreign Jurisdiction Act, 1890,[1] to direct by Order in Council that all or any of the enactments mentioned below,[2] or any enactments for the time being in force amending or substituted for the same, shall extend, with or without any exceptions, adaptations, or modifications, in the Order mentioned, to any foreign country in which for the time being Her Majesty has jurisdiction; and thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if Her Majesty in Council were the legislature of that possession.

[1] 53 & 54 Vict. c. 37, s. 5.

[2] 12 & 13 Vict. c. 96 (Admiralty Offences, Colonial); 14 & 15 Vict. c. 99 (Evidence), ss. 7, 11; 17 & 18 Vict. c. 104 (Merchant Shipping), Part X.; 19 & 20 Vict. c. 113 (Foreign Tribunals Evidence); 22 Vict. c. 20 (Evidence by Commission); 22 & 23 Vict. c. 63 (British Law Ascertainment); 23 & 24 Vict. c. 122 (Admiralty Offences); 24 & 25 Vict. c. 11 (Foreign Law Ascertainment); 30 & 31 Vict. c. 124 (Merchant Shipping Act Amendment), s. 11; 37 & 38 Vict. c. 94 (Conveyancing, Scotland), s. 51; 44 & 45 Vict. c. 69 (Fugitive Offenders); 48 & 49 Vict. c. 74 (Evidence by Commission).

## *Section 2.*



In conquered countries the laws remain until they are altered by the conqueror.[1] Thus in Lower Canada (Quebec) the Old French Law prevails (unless altered by legislation) in civil matters[2]; where the law relating to property from 1774 to 1867, when the Codes came into force, must be taken to be the "Coutume de Paris," except in such special cases as may be shown to fall under some other law,[3] but the criminal law is that in force in England in 1763.[4] In S. Lucia a code of civil law based upon the principles of the ancient law of the island[5] came into force in October, 1879. In the Mauritius the French Codes prevail for civil matters.[6] In Ceylon,[7] the Cape of Good Hope,[8] Natal, and in the civil courts

[1] *Campbell* v. *Hall*, 20 State Tr. col. 323; *Blankard* v. *Galdy*, 2 Salk. 411; *R.* v. *Vaughan*, 4 Burr. p. 2500; *Ruding v. Smith*, 2 Hagg. Consist. Rep. p. 382.

[2] *Nye v. Macdonald*, L. R. 3 P. C. 331. See also *Symes* v. *Cuvillier*, L. R. 5 App. 138.

[3] *Exchange Bank of Canada* v. *Reg.*, L. R. 11 App. p. 164.

[4] *Reg.* v. *Coote*, L. R. 4 P. C. 599.

[5] The Coutume de Paris, *Du Boulay* v. *Du Boulay*, L. R. 2 P. C. 430; *Gahan* v. *Lafitte*, 3 Moo. P. C. C. 382.

[6] *D'Epinay* v. *Cockerell*, 1 Moo. P. C. C. 103; *In re Adam*, 1 Moo. P. C. C. 460; *Rochecouste* v. *Dupont*, 2 Moo. P. C. C., N. S., 195; *Chapman* v. *Oriental Bank Corporation*, 2 Moo. P. C. C., N. S., 463; *Peninsular and Oriental S. N. Co.* v. *Shand*, 3 Moo. P. C. C., N. S., 272; *Sérendat* v. *Saïsse*, L. R. 1 P. C. 152; *H.M. Procureur-Général* v. *Bruneau*, L. R. 1 P. C. 169; *Lagesse* v. *Lagesse*, L. R. 4 P. C. 553; *Courtaux* v. *Hewetson*, L. R. 6 P. C. 407.

[7] *Lindsay* v. *Oriental Bank Corporation*, 13 Moo. P. C. C. 401; *Hettihewage Siman Appu* v. *Queen's Advocate*, L. R. 9 App. 571.

[8] *Denyssen* v. *Mostert*, L. R. 4 P. C. 236; *Scott* v. *H.M.'s Attorney-General*, L. R. 11 P. D. 128.

of British Guiana,[1] the Roman-Dutch law prevails.[2] In Trinidad the laws of Spain as established there at the time of its capture by England in 1797 remain in force in so far as not abolished by legislation.[3] In Gibraltar the law of England as it existed on 31st December, 1883, is to be, subject to some exceptions, hereafter in force in the city, garrison, and territory of Gibraltar.[4]

This doctrine was discussed at considerable length by Lord Stowell in *Ruding* v. *Smith*.[5] That learned judge pointed out that even with respect to the ancient inhabitants no small portion of the ancient law is unavoidably superseded by the revolution of government that has taken place. The allegiance of the subjects, and all the law that relates to it—the administration of the law in the sovereign, and appellate jurisdictions, and all the laws connected with the exercise of the sovereign authority—must undergo alterations adapted to the change.[6]

"Though the old laws are to remain, it is surely a sufficient application of such terms as

[1] *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341.

[2] There is no authority for saying that the Roman-Dutch law of Holland in force in Ceylon at the time of its conquest by the British empowered the subject to sue the Government. But since the conquest a very extensive practice of suing the Crown has sprung up and been recognised by the legislature, and is now incorporated into the law of the land. See *Hettihewage Siman Appu* v. *Queen's Advocate*, L. R. 9 App. 571.

[3] See *Escalier* v. *Escalier*, L. R. 10 App. 312.

[4] Order in Council, Feb. 2, 1884, cl. 2; *London Gazette*, 1884, p. 579; and see cl. 4.

[5] 2 Hagg. Consist. Rep. 371.

[6] Ibid. p. 382.

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'that they shall remain in force,' if they continue to govern (as far as they do continue) the transactions of the ancient settlers with each other, and with the new owners. To allow that they shall intrude into all the separate transactions of the British conquerors is to give them a validity which they would otherwise want in all cases whatever."[1]

This would appear to be stated too broadly. The word "remain" may be understood with reference not only to the old inhabitants, but to the country in which the laws have had sway. At the present day it is the territorial rather than the personal application of laws that is the rule in countries of the European type. The ex-territoriality clauses in treaties with Eastern powers, such as China or Japan, whereby Europeans resident in those countries are exempted from the jurisdiction of native courts and magistrates, reviving to some extent the system of personal laws that obtained in Europe after the break-up of the Roman Empire, are looked upon only as a temporary and inconvenient expedient, and are open to objection as curtailing the sovereign rights of independent states.

Lord Mansfield lays down, in *Campbell* v. *Hall*, that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the

[1] 2 Hagg. Consist. Rep. p. 383.

rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privileges distinct from the natives.[1] Every alien coming into a British colony becomes temporarily a subject of the Crown,—bound by, subject to, and entitled to the benefit of, the laws which affect all British subjects. He has obligations and rights both within and beyond the colony into which he comes. As to his rights within the colony he may well be bound by its laws; but as to his rights beyond the colony he cannot be affected by those laws, for the laws of a colony cannot extend beyond its territorial limits.[2]

In *Ruding* v. *Smith*[3] Lord Stowell was examining whether a marriage celebrated at the Cape of Good Hope according to English law, shortly after the surrender of that colony by the Dutch to the English, was invalid as not conformable to the Dutch law, the *lex loci*. The colony was surrendered to the British forces in 1795. Mr. Ruding, a British subject, came there in September, 1796, on his way to serve with his regiment in the East Indies; and was married to an Englishwoman in October, 1796, by the chaplain of the British garrison, in a private

[1] 29 St. Tr. col. 323.
[2] *Low* v. *Routledge*, L. R. 1 Ch. App. p. 47.
[3] 2 Hagg. Consist. Rep. p. 371.

house, under a licence from the commander-in-chief of the British forces there. Lord Stowell decided that the marriage was valid, on the distinct British character of the parties—on their independence of the Dutch law in their own British transactions—on the insuperable difficulties of obtaining any marriage conformable to the Dutch law—on the countenance given by British authorities and British ministration to this British transaction—upon the whole country being under British dominion—and upon the other grounds to which he had adverted.[1] The principle of the decision is embodied in the following proposition by Mr. Westlake in his *Private International Law*[2]: "Where a marriage valid according to the *lex loci actus* is impossible from the want of any such law applicable to the case, parties may marry with the forms, so far as it is possible to observe them, and with the consents, respectively required by their own law." Mr. Westlake adds that in *Ruding* v. *Smith* the impossibility arose from the Dutch law at the Cape of Good Hope not applying to British persons passing through the place so soon after the conquest that its future legal system was not settled.[3]

[1] 2 Hagg. Consist. Rep. p. 394. [2] 3rd ed. p. 60.

[3] Cp. *Armitage* v. *Armitage*, L. R. 3 Eq. 343. By 55 & 56 Vict. c. 23 (The Foreign Marriage Act, 1892), s. 22, it was declared that all marriages solemnised within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be as valid in

Statutes manifestly of universal policy, and intended to affect all our transmarine possessions at whatever period they shall be acquired,—*e.g.*, navigation laws, and Acts for abolishing slavery and the slave trade—come into force independently of posterior legislation immediately on conquest or cession.[1] So also the English bankruptcy law has been held binding in the colonies.[2]

The *status* of persons domiciled in a colony is determined by English law; the rights and liabilities incidental to such *status* by colonial law.[3]

Laws contrary to the fundamental principles of the British constitution cease at the moment of conquest.[4] Accordingly torture cannot be inflicted by English authority in a conquered colony. "The torture, as well as banishment, was the old law of Minorca, which fell of course when it came into our possession. Every English governor knew he could not inflict the torture; the constitution of this country put an end to that idea."[5]

The power of the sovereign to make new laws for a conquered country has often been asserted by the Courts. "Where the King of England conquers a

law as if the same had been solemnised within the United Kingdom with a due observance of all forms required by law.

[1] Clark's Colonial Law, 15, 16; *Dawes* v. *Painter*, Freem. 175.

[2] *Ellis* v. *M'Henry*, L. R. 6 C. P. 228; cp. *Ex parte Rogers*, L. R. 16 Ch. D. 665; and see *Gill* v. *Baron*, L. R. 2 P. C. 157. But see *ante*, p. 10.

[3] *In re Adam*, 1 Moo. P. C. C. 460.

[4] Cp. Lord Ellenborough, 30 St. Tr. col. 742.

[5] *Fabrigas* v. *Mostyn*, 20 St. Tr. col. 181. As to Chinese slavery in Hong Kong, *vide* Blue Book [C. 3185] of 1882.

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country, it is a different consideration; for then the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which he may impose upon them what laws he pleases."[1] In *Smith* v. *Brown*[2] Lord Holt said that the laws of England did not extend to Virginia; being a conquered country, their law was what the king pleased. So in *Beaumont* v. *Barrett*[3] it was laid down that Jamaica was a conquered island, and, as in other territory obtained by conquest, such laws were in force there as the king by his supreme authority might choose to direct. The king has the whole legislative power in a conquered colony, in so far as he may not have parted with it by capitulation or by his own voluntary grant.[4]

But where the sovereign has once granted legislative powers to a colony, he cannot afterwards himself exercise those powers in reference to local matters. This was decided in the celebrated case of *Campbell* v. *Hall*,[5] an action brought to recover a sum of money paid to the collector of His Majesty George the Third, as a duty of 4½ per cent. on certain exports from the island of Grenada. The Court gave judgment for the plaintiff on the ground that, previously to issuing the Letters Patent imposing the duty, the king had empowered the governor to summon a legislative assembly for the island, and

[1] 2 P. Will. 75; cp. *A.-G.* v. *Stewart*, 3 Mer. p. 157.
[2] 2 Salk. 666. [3] 1 Moo. P. C. C. p. 75.
[4] *Cameron* v. *Kyte*, 3 Knapp, p. 346.
[5] 20 St. Tr. 239.

had thereby precluded himself from afterwards exercising legislative authority by virtue of his prerogative.

The same principle was acted on in *In re Bishop of Natal.*[1] There the Queen, as sovereign and head of the Established Church, had created by Letters Patent a Metropolitan, with episcopal jurisdiction in the colony of the Cape of Good Hope, which colony had at the time a Legislative Council and House of Assembly. By the Letters Patent the Metropolitan was to exercise metropolitan jurisdiction over the Bishop of Natal, with power to visit, correct, and supply the defects of the said bishop. By other Letters Patent a Bishop of Natal was created, to be subject and subordinate to the See of Cape Town in the same manner as a bishop of any See within the Province of Canterbury was under the authority of the archbishop thereof; with an appeal to the archbishop. The District of Natal had previously been granted by Letters Patent from the Crown a Legislative Council partly elective. These Letters Patent were not made in pursuance of any Order in Council, or Imperial Statute, nor confirmed by any Act of the Legislature of the Cape of Good Hope, or of the Legislative Council of Natal. The Metropolitan having sentenced the Bishop of Natal to deposition from his office, the sentence was, on appeal to the Judicial Committee, held to be void. They apprehended it

[1] 3 Moo. P. C. C., N. S., 115, following *Long* v. *Bishop of Cape Town*, 1 Moo. P. C. C., N. S., 411.

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to be clear on principle that, after the establishment of an independent legislature in the settlements of the Cape of Good Hope and Natal, there was no power in the Crown by virtue of its prerogative to establish a metropolitan See or Province, or to create an ecclesiastical corporation whose *status*, rights, and authority the colony could be required to recognise.

The United Church of England (and Ireland) is not a part of the constitution in any colonial settlement, nor can its authorities or those who bear office in it claim to be recognised by the law of the colony, otherwise than as the members of a voluntary association.[1]

The Church of England in places where there is no church established by law is in the same situation with any other religious body,—in no better, but in no worse, position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their own body, which will be binding on those who expressly or by implication have assented to them. When any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms

[1] *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 148.

as the rules require, if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of justice. In such cases the tribunals so constituted are not in any sense Courts. They derive no authority from the Crown, they have no power of their own to enforce their sentences, they must apply for that purpose to the Courts established by law, and such Courts will give effect to their decision as they give effect to the decisions of arbitrators, whose jurisdiction rests entirely upon the agreement of the parties. These are the principles upon which the Courts in England have always acted in the disputes which have arisen between members of the same religious body, not being members of the Church of England.[1]

Although in a Crown colony, properly so called, or in cases where the Letters Patent are made in pursuance of the authority of an Act of Parliament (such, for example, as the Act 6 & 7 Vict. c. 13, or now 50 & 51 Vict. c. 54), a bishopric may be constituted, and ecclesiastical jurisdiction conferred, by the sole authority of the Crown, yet the Letters Patent from the Crown will not have any such effect or operation in a colony or settlement which is possessed of an independent legislature.[2]

The Crown has no prerogative right to present to a benefice in England becoming vacant by the promotion of the incumbent to a colonial bishopric

[1] *Long* v. *Bishop of Capetown*, 1 Moo. P. C. C., N. S., 411. See *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. pp. 35, 38. And cp. *Merriman* v. *Williams*, L. R. 7 App. 484.

[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 151.

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within the Queen's dominions, which has been erected and constituted solely by the exercise of the prerogative of the Queen.[1]

It cannot be said that any ecclesiastical tribunal or jurisdiction is required in any colony or settlement where there is no established church, and in the case of a settled colony the ecclesiastical law of England cannot for the same reason be treated as part of the law which the settlers carried with them from the mother country.[2] There is no power in the Crown to create any new or additional ecclesiastical tribunal or jurisdiction. No metropolitan or bishop in any colony having legislative institutions can, by virtue of the Crown's Letters Patent alone (unless granted under an Act of Parliament or confirmed by a colonial statute), exercise any coercive jurisdiction or hold any court or tribunal for that purpose.[3]

A colonial bishop may as bishop visit; he may as bishop call before him the ministers within his diocese; and he may inquire respecting their morals and behaviour and the doctrines that they preach; but the power of enforcing obedience to his orders in the performance of these duties, and the power of removing any obstruction which may be interposed to prevent his performing any of the functions of a bishop, is not given to him personally or to any officers of his or dependent upon him. To en-

[1] *Reg.* v. *Provost and Fellows of Eton College and Rev. J. A. Clarke*, 27 L. J. Q. B. 132; 8 E. & B. 610.

[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 152.

[3] Ibid. 154.

force obedience to his orders, or to remove obstructions interposed to prevent him performing his functions, he must have recourse to the civil tribunals which administer the law of the colony, before which tribunal the person who resists the acts of the bishop may contest the validity or legality of the acts intended to be done by the bishop, or of the orders given by him.[1] With the assistance of the secular tribunals in the colony he can perform all the acts and duties which belong to the office of bishop according to the doctrine of the Church of England.[2] A bishop in a colony is bishop only over all the members of the Church of England resident within the colony.[3]

After a colony or settlement has received legislative institutions, the Crown (subject to the special provisions of any Act of Parliament) stands in the same relation to that colony or settlement as it does to the United Kingdom.[4]

The power of the Crown to make law may be exercised not only by Order in Council, but by charter of justice under the Great Seal.[5]

But the king can make no laws which are contrary to fundamental principles, none exempting from the laws of trade, or the authority of Parliament, or giving privileges exclusive of his other subjects.[6]

[1] *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. p. 33.
[2] Ibid. p. 34. [3] Ibid. p. 41. [4] 3 Moo. P. C. C., N. S., p. 148.
[5] *Jephson* v. *Riera*, 3 Knapp, 130. In this case it was decided that the English law of real property had been substituted for the law of Gibraltar, so as to give a widow dowry of her husband's land.
[6] 20 St. Tr. col. 323. But see the provisions of the Colonial Laws Validity Act, 1865 (28 & 29 Vict. c. 63), s. 3, *post* p. 56.

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In ceded colonies the sovereign's legislative power is the same as in conquered colonies, except that if the treaty of cession regulate the right of legislation, the terms ought to be obeyed. Thus the Mauritius, before its surrender to Great Britain in 1810, was a French colony; and having been surrendered on the condition that the inhabitants should preserve their religion, laws, and customs, the law of France as established in the colony before that event must be looked to.[1] As to the effect of a cession of British territory on the nationality of persons domiciled therein at the time and continuing therein, *vide Doe v. Acklam*.[2]

## *Section* 3.

Sect. 3. Generally.

As to the distinction in general between colonies by settlement and colonies by conquest or cession, the following observations were made by the Master in his report in the case of *Freeman* v. *Fairlie*[3]: "I apprehend the true general distinction to be in effect between countries in which there are not, and countries in which there are, at the time of their acquisition any existing civil institutions and laws; it being in the first of those cases matter of necessity that the British settlers should use their native laws, as having no others to resort to; whereas in the other case there is an established *lex loci* which it might be highly inconvenient all at once to abrogate, and therefore it remains till changed by the

[1] *In re Adam*, 1 Moo. P. C. C. p. 470.
[2] 2 B. & C. 779; 2 L. J. K. B. 129.
[3] 1 Moo. Ind. App. 324.

deliberative wisdom of the new legislative power. In the former case also there are not, but in the latter case there are, new subjects to be governed, ignorant of the English laws, and unprepared perhaps in civil and political character to receive them. The reason why the rules are laid down in books of authority with reference to the distinction between new-discovered countries on the one hand, and ceded or conquered countries on the other, may be found, I conceive, in the fact that this distinction had always, or almost always, practically corresponded with that between the absence and the existence of a *lex loci*, by which the British settlers might, without inconvenience, for a time be governed; for the powers from whom we had wrested colonies by conquest, or had obtained them by treaties of cession, had ordinarily, if not always, been civilised and Christian states, whose institutions therefore were not wholly dissimilar to our own."

The law of a colony upon any particular point must be proved as a matter of fact in the Courts at Westminster.[1] A provincial law will not be noticed by the Judicial Committee of the Privy Council if it is not mentioned on the record.[2] In the absence of proof, although a different system of jurisprudence may prevail, the general law of England will be applied—*e.g.*, in questions relating to lands

[1] *Astley* v. *Fisher*, 6 C. B. 572. And see *In re Gillespie*, L. R. 16 Q. B. D. 702.

[2] *Donegani* v. *Donegani*, 3 Knapp, 63.

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in a colony[1]; and in the case of land in a particular district of a colony, into which the system prevailing generally in the colony has never been introduced, English law will be applied.[2] And generally, until foreign law (under which description colonial law is included) is proved to be different, there is a presumption that it is the same as that of England.[3]

As an alternative to proving foreign law by the evidence of an expert, 22 & 23 Vict. c. 63 provides for the remission of cases by courts in one part of Her Majesty's dominions for the opinion in law of a court in any other part thereof[4]; and 24 Vict. c. 11 enacts that Superior Courts within Her Majesty's dominions may in any action remit a case to the court of any foreign State with which Her Majesty may have made a convention for that purpose to ascertain the law of such State.

It is a settled constitutional principle that, although the Crown may by its prerogative establish courts to proceed according to the common

[1] *Bentinck* v. *Willink*, 2 Hare 1.

[2] *Lindsay* v. *Oriental Bank Corporation*, 13 Moo. P. C. C. 401. The right to treat rent as a specialty debt is incident to privity of estate—a doctrine connected with the old feudal tenure, and with the ancient right of the landlord to come on the land and oust the tenant—and not to privity of contract. It does not therefore apply to the case of lands out of England: *Vincent* v. *Godson*, 4 De G. M. & G. 546. The English common law of real property is of no force in Jersey: *De Carteret* v. *Baudains*, L. R. 11 App. p. 219.

[3] *Smith* v. *Gould*, 4 Moo. P. C. C., 21; *Lloyd* v. *Guibert*, L. R. 1 Q. B. p. 129. How proved, see *In the Goods of Bonelli*, L. R. 1 P. D. 69; 45 L. J. P. D. 42. In the Admiralty Court the strictness of the Courts of common law as to proof was not adhered to: *The Peerless*, 1 Lush. 30.

[4] See *Lord* v. *Colvin*, 29 L. J. Ch. 297; 1 Drew. & Sm. 24.

law, yet it cannot create any new court to administer any new law; the erection of a new court with a new jurisdiction cannot be without an Act of Parliament.[1]

The Queen's prerogative extends to the colonies. Every right which she possesses by forfeiture extends as much to the colonies as to England. Therefore by the law as it existed prior to the abolition of forfeiture for felony in 1870[2] she was entitled to all the goods of a felon convicted in a colony.[3] So also, in the case of a prerogative administration taken out before 1857 from the Archbishop of Canterbury, it was laid down that it extends to all personal property of British subjects dying intestate in foreign countries or in the colonies, wherever the property might be situate at the time of death.[4] The provisions of the Bankruptcy Act, 1883,[5] have not been incorporated into the Companies Act, 1862, by s. 10 of the Judicature Act, 1875, so as to bar the prerogative right of the Crown to issue process and obtain payment in full of a debt due from a company in liquidation. And this right may be exercised in the colonies.[6]

Every colony is of course subject to the para-

[1] 3 Moo. P. C. C., N. S., p. 152.

[2] 33 & 34 Vict. c. 23.

[3] *In re Bateman's Trust*, L. R. 15 Eq. 355.

[4] *Whyte* v. *Rose*, 3 Q. B. 507; 11 L. J. Ex. 457. Now see the Probate Act of 1857 (20 & 21 Vict. c. 77), s. 4.

[5] 46 & 47 Vict. c. 52.

[6] *In re Oriental Bank Corporation, Ex parte The Crown*, L. R. 28 Ch. D. 643.

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mount legislative authority of Parliament.[1] This is expressly asserted as regards conquered colonies in the first proposition laid down by Lord Mansfield in *Campbell* v. *Hall*[2]: "A country conquered by the British arms becomes a dominion of the King in right of his Crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain." Sir T. Erskine May declares in broader language, that "the legislative authority of Parliament extends over the United Kingdom and all its colonies and foreign possessions, and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey or their power to resist. . . . For some colonies the Queen in Council legislates, while others have legislatures of their own which propound laws for their internal government, subject to the approval of the Queen in Council; but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures and their laws are both subordinate to the supreme power of the mother country."[3] He instances the suspension of the Canadian constitution by 1 & 2 Vict. c. 9 and 2 & 3 Vict. c. 53; the abolition of slavery in all British possessions by 3 & 4 Will. 4, c. 73; and other cases. An alien friend, residing in Canada during the publication in England of a work composed by

[1] Clark's Colonial Law, 10; 1 Blackst. by Harg. 108.

[2] 20 St. Tr. col. 322.

[3] Parliamentary Practice, 40.

her, was adjudged entitled to copyright under the Imperial Copyright Act, 5 & 6 Vict. c. 45, although she was not so entitled by the Canadian Copyright Act,—the Imperial Act, by ss. 2 and 29, extending to all the colonies, settlements, and possessions of the Crown now and hereafter.[1] The Act to remove doubts as to the validity of colonial laws[2] enacts (s. 2) that "any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain void and inoperative."

Judicial notice will be taken of the fact that a colony is abroad; as in the case of the colony of Victoria.[3] And for the purposes of the Divorce Court the colonies are foreign countries.[4]

British subjects cannot take possession in their own right of a foreign country. No colony can be settled without authority from the Crown.[5] A

[1] *Low* v. *Routledge*, L. R. 1 Ch. App. 42. *Cf. Low* v. *Ward*, L. R. 6 Eq. 415.

[2] 28 & 29 Vict. c. 63.

[3] *Cooke* v. *Wilson*, 1 C. B. N. S. 153; 26 L. J. C. P. 15.

[4] *Firebrace* v. *Firebrace*, L. R. 4 P. D. 63; 47 L. J. Div. 41.

[5] *Per* Lord Mansfield, 20 St. Tr. col. 287. See *ante*, p. 13, for the government of settlements in places where there is no formally constituted authority.

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country conquered by the British arms becomes a dominion of the King in right of his Crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain.[1]

An alien has no legal right, enforceable by action, to enter British territory.[2]

The sway exercised by Sir James Brooke over the territory of Sarawak in the Island of Borneo presents a problem of some interest in connection with this topic. Sir James Brooke, commonly known as Rajah Brooke, was a British subject who in 1842 received from the Sultan of Borneo a grant of the government of Sarawak subject to a tribute. In 1853 the tribute was remitted, and power was given to Rajah Brooke to nominate his successor, who, as well as each following successor, was to pay the Sultan £1000 on his accession, or on the demise of his predecessor. In 1855 a commission was sent out by the English Government to Singapore to inquire into the position of Sir James Brooke in Borneo. On that occasion the exact nature of the relation between him and the Sultan of Borneo could not be elucidated, owing to the fact that the document containing the grant from the latter to the former was not brought forward. But one of the Commissioners stated in his report that, in the face of the precedent of the assertion of the sovereignty of the English Crown over the territorial possessions of the East India Company set

[1] 20 St. Tr. col. 323. And see *The Foltina*, 1 Dods. 450.

[2] *Musgrove* v. *Chun Teeong Toy*, L. R. (1891) A. C. 272.

forth in 53 Geo. 3, c. 155, s. 95,[1] he should not be inclined to uphold the opinion that Sir James Brooke or any other British subject could attain to the position of being an independent ruler of a foreign territory.[2] This difficulty prevented the British Government for some years from sending out any official to protect the interests of Englishmen in Sarawak. But at length they yielded to the persistent arguments of Sir James Brooke and his friends; and in January, 1864, a British Consul was appointed to Sarawak,[3] and obtained his *exequatur* through the instrumentality of Sir James Brooke, the ruler of that territory. In August, 1867, the Consul having resigned the previous year, an unpaid British Vice-Consul was appointed to Sarawak, and obtained his *exequatur* also from the ruling authorities of that settlement. The Vice-Consul resigned in June, 1872; and in October, 1882, Mr. Peter Leys was appointed Consul.[4] In 1888 Sarawak was placed under British protection.

[1] Provided always and be it further enacted that nothing in this Act contained shall extend or be construed to extend to prejudice or affect the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the said territorial acquisitions.

[2] Report of Commissioners, 1855, p. 19.

[3] *London Gazette*, 19 Jan. 1864.

[4] *London Gazette* of date. See now the British Settlements Act, 1887 (50 & 51 Vict. c. 54).

# CHAPTER II.

## THE EXECUTIVE.

### *Section I.—The Governor.*

#### A.—*Nature of his Office, Powers, and Duties.*



THE authority of the Queen in the colonies is represented by a Governor, Governor-General, or Governor-in-Chief.[1] He is appointed by Her Majesty's Commission, which confers upon him his powers, and with his instructions defines generally his duties. The Governor of a colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited to the powers thereby expressly or impliedly entrusted to him.[2]

The titles Governor-in-Chief and Governor-General are given to governors whose commissions comprise several distinct colonies.[3] Such Governments-in-Chief are :—

1. The Dominion of Canada, comprising the

[1] 12 & 13 Vict. c. 96, s. 5; 26 & 27 Vict. c. 84, s. 1; &c.

[2] *Musgrave* v. *Pulido*, L. R. 5 App. p. 111.

[3] See Rules and Regulations for H.M. Colonial Service, Colonial Office List.

provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward's Island, Manitoba, North-West Territories, British Columbia, and Vancouver's Island.[1]

2. Jamaica, to which is attached Turks Islands.

3. The Windward Islands, composed of Grenada, St. Vincent, St. Lucia.

4. The Leeward Islands, composed of Antigua, St. Christopher's, Dominica, Nevis, the Virgin Islands, and Montserrat.

By the Interpretation Act, 1889,[2] the expression "Governor" in that and every subsequent Act is to mean, as respects Canada and India, the Governor-General, and to include any person who for the time being has the power of the Governor-General; and as respects any other British possession, is to include the officer for the time being administering the government of that possession.

The Governor-in-Chief administers the government of every colony comprised within his command whenever he is present therein. During his absence the administration is carried on by a Lieutenant-Governor, appointed by the Crown, or a President of the Council (in the West Indies).

In discussing the relation to the Crown of Lieutenant-Governors of Canadian Provinces the Judi-

[1] See British North America Act, 1867 (30 & 31 Vict. c. 3), and the amending Acts, 34 & 35 Vict. c. 28 and 38 & 39 Vict. c. 38.

[2] 52 & 53 Vict. c. 63, s. 18 (6).

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cial Committee in a recent case[1] expressed it as their opinion that "there is no constitutional anomaly in an executive officer of the Crown receiving his appointment at the hands of a governing body who have no powers and no functions except as representatives of the Crown. The act of the Governor-General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor-General himself is for all purposes of Dominion government."

Governors are appointed during Her Majesty's pleasure, but do not usually retain office longer than six years. In the event of a demise of the Crown, their commissions remain in force until the expiration of eighteen months therefrom.[2]

The following is a summary[3] of the most important of a Governor's powers and duties, subject to the special law of each colony:—

1. He may pardon or respite criminals, and remit fines, penalties, or forfeitures accruing to the Queen.[4] Transported convicts he may recommend to Her Majesty for an absolute or conditional pardon.[5]

[1] *Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. p. 443.

[2] 1 Will. 4, c. 4, s. 2. See *Devine* v. *Holloway*, 14 Moo. P. C. C. p. 298.

[3] See Rules and Regulations, C. O. List.

[4] See the important case between the Governor and the Supreme Court of the Bahamas now (Jan. 1893) under consideration of the Judicial Committee of the Privy Council.

[5] 6 & 7 Vict. c. 7, s. 2; *Barnett* v. *Blake*, 2 Drew. & Sm. 117.

2. The moneys to be expended for the public service are issued under his warrant.

3. He grants licences for marriages, letters of administration, and probate of wills, unless other provision be made by charter of justice or local law; and in many cases presents to benefices of the Church of England in the colony.

4. He issues writs in the Queen's name for the election of representative assemblies and councils; convokes and prorogues legislative bodies, and dissolves those liable to dissolution.

5. He appoints, absolutely or temporarily and provisionally, to offices in the colony.

6. In colonies possessing responsible government he has, with his Council, the entire power to suspend or dismiss public servants holding during pleasure.[1] In other colonies he can suspend under certain regulations, and has a limited power of dismissal.

7. His assent to bills passed by the local legislature is necessary to their becoming law. But in certain cases—*e.g.*, matters concerning the currency, the army and navy, differential duties, foreign treaties, the prerogative, or rights of Her Majesty's subjects not resident in the colony,—he must reserve bills for the Royal assent, or assent

By 5 Geo. 4, c. 84, s. 26, felons who have received from the Governor or Lieutenant-Governor of a colony a remission, either absolute or conditional, of the whole or a part of the term of their transportation, are protected in the enjoyment of property acquired since their conviction. See *Gough* v. *Davies*, 2 Kay & J. 623; 25 L. J. Ch. 677; *Fleming* v. *Smyth*, 12 Ir. Com. Law Rep. 404.

[1] *Ex parte Robertson*, 11 Moo. P. C. C. 288.

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to them with a clause suspending their operation till confirmed by the Crown.[1]

8. He must repel aggression, and endeavour to his utmost to suppress piracy.[2] Also he must direct his attention to the state of the militia and volunteers in the colony, and report periodically on the subject.

9. He may not leave the colony without Her Majesty's permission, nor receive or give presents, nor forward articles for presentation to Her Majesty.

10. In colonies without representative assemblies the initiation of law belongs in general to the Governor. In colonies having representative assemblies it is in many cases provided that the initiation of all measures for the appropriation of public money shall belong to the Governor.

In West Indian islands, or African settlements forming part of any general government, every bill or draft ordinance must be submitted to the Governor-in-Chief before it receives the assent of the Lieutenant-Governor or Administrator.

The nature of a Governor's official position and authority generally was discussed at some length in the case of *Cameron* v. *Kyte*,[3] where the question

[1] And see Colonial Courts and Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 4. As to the Governor-General of Canada, see Todd's Parliamentary Government in the Colonies, pp. 83 *seqq.*

[2] *Vide per* Willes, J., in *Phillips* v. *Eyre*, L. R. 6 Q. B. p. 15, as to the duty of a Governor in case of a rebellion. The doctrine of martial law was discussed before a Committee of the House of Commons appointed in 1849 to inquire into certain transactions in Ceylon.

[3] 3 Knapp, 332.

was whether the Governor of the Colony of Berbice could of his own authority, without any special powers by his commission or instructions or by the laws of the colony, reduce the commission of the Vendue Master, an officer whose duty it was to sell all property sold by public auction. In that case the judgment of the Judicial Committee, after showing that the right to make such an order, if it existed at all, must, under the circumstances of the case, be implied from the nature of the office of Governor, proceeded as follows[1]:—"If a Governor had, by virtue of that appointment, the whole sovereignty of the colony delegated to him as a Viceroy, and represented the King in the government of that colony, there would be good reason to contend that an act of sovereignty done by him would be valid and obligatory upon the subject living within his government, provided the act would be valid if done by the Sovereign himself, though such act might not be in conformity with the instructions which the Governor had received for the regulation of his own conduct. The breach of those instructions might well be contended, on this supposition, to be matter resting between the Sovereign and his deputy, rendering the latter liable to censure or punishment, but not affecting the validity of the act done. But if the Governor be an officer merely with a limited authority from the Crown, his assumption of an act of sovereign power, out of the limits of the authority so given to him, would be purely void, and the

[1] Ibid. p. 343.

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courts of the colony over which he presided could not give it any legal effect. We think the office of Governor is of the latter description; for no authority or *dictum* has been cited before us to show that a Governor can be considered as having a delegation of the whole Royal power in any colony, as between him and the subject, when it is not expressly given by his commission. And we are not aware that any commission to colonial Governors conveys such an extensive authority."

Apparently the non-objection on the part of the Crown to a notification or proclamation issued by a Governor of one of its ceded colonies does not imply that the Governor had authority in the subject of the proclamation; nor will its non-interference render the proclamation valid on the ground of acquiescence.[1]

In the case of *Musgrave* v. *Pulido*,[2] an action against the Governor of Jamaica for damages for an unlawful seizure and detention at Kingston in Jamaica of a ship of which the plaintiff was the charterer, the principal decisions (including *Cameron* v. *Kyte*) upon the position of Governors of colonies were reviewed, and the result enunciated as follows[3]:—

"It is apparent from these authorities that the Governor of a colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited

[1] Ibid. p. 332. [2] L. R. 5 App. 102. [3] Page 111.

to the powers thereby expressly or impliedly entrusted to him."

The Governor of a colony, being the person to whom the general management of such colony is entrusted, is the person entitled to the bounties payable in respect of a seizure of slaves, even though he is absent from the colony at the time the seizure is made.[1]

The jurisdiction conferred by the Naturalization Act of 1870[2] on the Secretary of State in the United Kingdom, in respect of the grant of a certificate of readmission to British nationality, may be exercised, in the case of any statutory alien being in any British possession, by the Governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.[3]

The Extradition Acts of 1870 and 1873 extend to the colonies.[4] The requisition by a foreign State for the surrender of a fugitive criminal in a colony may be made to the Governor of the colony, in whom are vested all the powers and authorities in relation to the surrender exercisable by a police magistrate or by a Secretary of State in England.[5] Under the Fugitive Offenders Act[6] also, which

[1] *In re Seizure of Slaves at Sierra Leone*, Br. & Lush. Adm. R. 148; 32 L. J. Adm. 189.

[2] 33 & 34 Vict. c. 14. [3] Ibid. s. 8.

[4] 33 & 34 Vict. c. 52, s. 17; 36 & 37 Vict. c. 60, s. 1. See *post* Chap. III. sect. 3, p. 156.

[5] 33 & 34 Vict. c. 52, s. 17. [6] 44 & 45 Vict. c. 69.

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creates an intercolonial system of extradition, the Governor of a colony is empowered to endorse warrants issued in other parts of Her Majesty's dominions for the apprehension of fugitives in his colony[1]; and to order by warrant under his hand the return of such a fugitive, on the expiration of fifteen days after his committal to prison by a magistrate, or after the final decision of a Superior Court on a writ of *habeas corpus* or other like process with reference to the fugitive, to the part of Her Majesty's dominions from which he is a fugitive, to be dealt with there in due course of law.[2]

By the Territorial Waters Jurisdiction Act[3] no proceedings for the trial and punishment of a person not a subject of Her Majesty, charged with any offence declared by the Act to be within the jurisdiction of the Admiral, shall be instituted in any of the dominions of Her Majesty out of the United Kingdom except with the leave of the Governor thereof, and on his certificate that it is expedient that such proceedings should be instituted.[4] Production of a document at the trial purporting to be signed by the Governor, and containing such consent and certificate, is to be sufficient evidence of the consent and certificate for all the purposes of the Act.[5]

Her Majesty may by Order in Council vest any fortifications, works, buildings, or land in any

[1] S. 3. [2] S. 6.
[3] 41 & 42 Vict. c. 73. [4] S. 3. [5] S. 4.

colony, held in trust for the defence of that colony, in the Governor of the colony for the time being, on a representation of a Secretary of State and of the Commissioners of the Treasury that it is expedient so to do.[1] Every such representation proposed to be made to Her Majesty is to be laid before both Houses of Parliament and to lie upon the table for not less than forty days before it is submitted to Her Majesty.[2] Vesting Orders in Council have been made in the case of the following colonies :—

Mauritius, June 26, 1879 ;
Tasmania, March 18, 1880 ;
Queensland, March 2, 1881 ;
Western Australia, July 15, 1881 ;
Cape of Good Hope, May 3, 1882 ;
Canada, August 18, 1882.

The Governor of a colony may authorise persons to attest soldiers.[3] And where a court-martial is held in a colony, and there is no superior authority in a colony to confirm the findings of sentences of the court-martial, the Governor has power to confirm them.[4] He is also a qualified officer to confirm them when he is in command of the regular forces of the colony.[5] He must also approve of sentences of death passed by court-martial in the colony,[6] and of sentences of penal servitude so passed on conviction of manslaughter or rape, or any other civil

[1] 40 & 41 Vict. c. 23, s. 1.
[2] Ibid.
[3] 44 & 45 Vict. c. 58, s. 94, sub-s. 1.
[4] S. 54, sub-s. 4.
[5] S. 54, sub-s. 7.
[6] S. 54, sub-s. 7.

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offence under the section of the Act[1] relating to the trial by court-martial of civil offences.[2] He has also to arrange for the reception in prison in the colony of military prisoners, deserters, and absentees without leave.[3] He may also by proclamation declare the forces in the colony temporarily subject to the Army Act.[4]

In the event of a vacancy in the office of judge, registrar, marshal, or other officer of any Vice-Admiralty Court in a British possession, the Governor may appoint a fit person to fill the vacancy until an appointment is made by the Admiralty.[5] And whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex-officio* vice-admiral thereof.[6]

Under the Passenger Act, 1855,[7] the Governors of colonies are empowered to issue proclamations declaring what, for the purposes of the Act, shall be deemed to be the length of the voyage of a passenger ship from the colony to any other place, and prescribing the scale of diet and the necessary medicines and medical instruments, &c.; the requirements of such proclamations to be enforced in all Her Majesty's dominions as if incorporated in the Act; copies purporting to be under the hand of the Governor and under the public seal of the colony to be received in evidence unless proved

[1] Apparently s. 41.
[2] S. 54, sub-s. 9.
[3] Ss. 131, 132.
[4] S. 189, sub-ss. 2, 3, 4.
[5] 53 & 54 Vict. c. 27, s. 9 (*b*).
[6] S. 10.
[7] 18 & 19 Vict. c. 119.

not to be genuine.[1] Governors are also empowered to appoint surveyors and medical practitioners on board passenger ships proceeding on colonial voyages.[2] They may also defray the expenses of passengers picked up at sea and conveyed to their respective colonies.[3] The Governor of any colony has also to authorise the officer who sues for penalties and forfeiture under the Act.[4]

Prosecutions of unseaworthy ships in any British possession under the Merchant Shipping Act of 1876 can only be instituted by and with the consent of the Governor.[5]

Distressed seamen found abroad may be relieved and sent home at the public expense by Her Majesty's Governors.[6]

The Governor may, with the approval of one of Her Majesty's principal Secretaries of State, make regulations for granting certificates of registry of ships not exceeding sixty tons burden terminable at the end of six months.[7] He may also appoint surveyors to inspect crew spaces within his government.[8]

The powers and authorities vested in the Commissioners of Customs with regard to the Customs, or to trade and navigation, or the registry of ships or any interest therein in any of the British possessions abroad, are vested in the Governor, Lieutenant-Governor, or other person administer-

[1] S. 97. [2] S. 98. [3] S. 52 [4] S. 84.
[5] 39 & 40 Vict. c. 80, s. 4.
[6] 17 & 18 Vict. c. 104, s. 211.
[7] 31 & 32 Vict. c. 129, s. 1. [8] Ibid. s. 3.

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ing the government of any such possession.[1] He may also approve ports of registry and appoint surveyors of British ships.[2]

The Governor of any British possession out of the United Kingdom has power, subject to the laws of the possession, to make regulations as to the supply of lime or lemon juice, &c., for the use of ships.[3]

The Governor of a colony has no power to commit a non-accounting churchwarden.[4]

In *Cloete* v. *The Queen*,[5] and *Gahan* v. *Lafitte*,[6] the capricious and indiscreet exercise of their powers by Governors of colonies was restrained by the Privy Council.

In *The Queen* v. *Clarke*,[7] and *The Queen* v. *Hughes*,[8] the powers of the Governors of New Zealand and of South Australia to grant waste lands in those colonies respectively were discussed.

Provision is made for retiring pensions for Governors by 28 & 29 Vict. c. 113, amended by 35 & 36 Vict. c. 29; and see Pensions (Colonial Service) Act, 50 & 51 Vict. c. 13, which by s. 5 expressly applies the Pension Acts to Cyprus and H.M.'s High Commissioner there. As to Governors of the Isle of Man see 39 & 40 Vict. c. 43.

[1] 39 & 40 Vict. c. 36, s. 149: 17 & 18 Vict. c. 104, ss. 30, 31.
[2] 50 & 51 Vict. c. 62, s. 3.
[3] 30 & 31 Vict. c. 124, s. 6.
[4] *Basham* v. *Lumley*, 3 C. & P. 489.
[5] 8 Moo. P. C. C. 484.
[6] 3 Moo. P. C. C. 382.
[7] 7 Moo. P. C. C. 77.
[8] L. R. 1 P. C. 81.

*B.—Liability to answer for his acts.*

The liability of the Governor of a colony to answer before the courts of law for his acts may conveniently be discussed under two heads.

I. Liability to civil actions.

Here two questions arise in reference,—first, to the court in which the action may be brought; and, secondly, to the nature of the cause of action.

1. (*a*) It is well established by the case of *Hill* v. *Bigge*[1] that a Governor may be sued in the courts of his own government. That was an action against the Governor of Trinidad in the court of first instance of that island upon a bond given by the defendant to the plaintiffs in London before he became Governor. The defence was that the defendant was Governor of Trinidad, and therefore could not be sued in the courts of the island. It was argued that his official position exempted him from the jurisdiction of the courts of the island, by the process of which he might otherwise even be arrested on a *capias*, if judgment were obtained against him; and his freedom in that respect was likened to that of the Sovereign from actions by the subject. Lord Brougham, however, in delivering the opinion of the Judicial Committee, laid it down that the Governor "does not even represent the Sovereign generally, having only the functions delegated to him by the terms of his commission, and being only the officer to execute the

[1] 3 Moo. P. C. C. 465.

specific powers with which that commission clothes him."[1] His lordship pointed out that the liability to be taken in execution was not the necessary consequence of his being liable to have a judgment against him, the privilege from legal process then still existing in certain persons not protecting them from suits. The decision of the court of first instance in Trinidad was therefore affirmed on the principle that the Governor of a colony under the commission usually issued by the Crown cannot claim, as a personal privilege, exemption from being sued in the courts of the colony.[2]

(*b*) On the other hand, in *Fabrigas* v. *Mostyn*[3] the question was, whether the Governor of a colony could be sued in England for acts committed in his colony. The action was brought in the Common Pleas at Westminster by a native of Minorca against the Governor of that island for assault and false imprisonment. It was argued on the defendant's behalf that the action could not be brought in an English Court against the defendant, he being the Governor of a colony. Lord Mansfield held that the action did "most emphatically lie"; though some of the language he used in reference to the exemption of a Governor from all suits in the courts of his government must be allowed to have been too broad; and his *dictum*, that the Governor is in the nature of a Viceroy, and that therefore during his government no

[1] Ibid. p. 476. [2] L. R. 5 App. p. 107.
[3] 1 Cowp. 161; 20 St. Tr. 81.

action, civil or criminal, will lie against him in the courts of his government, was dissented from by Lord Brougham in *Hill* v. *Bigge*[1] as not necessary to the decision.

*Glynn* v. *Houston*[2] was an action for assault and false imprisonment brought in the Common Pleas at Westminster against the Lieutenant-Governor of Gibraltar by a British merchant resident there. On motion for a new trial the only question argued was whether the evidence was sufficient to warrant the verdict, the liability of the defendant in that court not being disputed.[3]

In *Wall* v. *Macnamara*,[4] which was an action against the Governor of Senegambia for false imprisonment, the principle on which should be tried the legality of acts done in the exercise of their duty by military officers abroad was discussed.

2. Secondly, as to the nature of the cause of action. The cases already cited sufficiently illustrate a Governor's liability for acts unconnected with his official capacity. The question whether he can be held liable for acts of State in his capacity of Governor has been raised, but has not yet received a direct answer in any of the courts. *Tandy* v. *The Earl of Westmoreland*[5] was an action against the Lord-Lieutenant of Ireland "for an act done in his politic capacity." In that case

[1] 3 Moo. P. C. C. 465. [2] 2 M. & G. 337.

[3] And see *Campbell* v. *Hall*, 20 St. Tr. 239; *Bryan* v. *Arthur*, 11 A. & E. 108; *Smith* v. *Nicholls*, 5 Bing. N. C. 208.

[4] Cited 1 T. R. 536. [5] 27 St. Tr. 1246.

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the Lord Chief Baron of Ireland (Lord Avonmore) declared that no man could maintain an action against a Lord-Lieutenant for an act of State during his government.[1]

That case was relied upon by the Court in *Luby* v. *Lord Wodehouse*,[2] where it was decided that no action was maintainable against a Lord-Lieutenant of Ireland in an Irish court during his continuance in office for any act done by him *qua* Lord-Lieutenant. In delivering judgment the Court referred apparently with approval to Lord Mansfield's *dictum* in *Fabrigas* v. *Mostyn* as to the non-liability of a Governor in the courts of his government. The disapproval in *Hill* v. *Bigge* is not irreconcilable with the approval in *Luby* v. *Lord Wodehouse*. *Hill* v. *Bigge* only decided that an action could be brought against a Governor in the courts of his government for a cause unconnected with his political capacity; while *Luby* v. *Lord Wodehouse* decided that an action could not be brought in Ireland against the Lord-Lieutenant of Ireland for an act done in his political capacity.

Both *Tandy* v. *The Earl of Westmoreland* and *Luby* v. *Lord Wodehouse* were mentioned in the judgment in *Musgrave* v. *Pulido*,[3] and it was remarked that in these cases the Lord-Lieutenant appears to have been regarded as a Viceroy. In both the facts were brought before the Court, and in both it appeared that the acts complained

[1] Ibid. col. 1264. [2] 17 Ir. C. L. R. 618.
[3] L. R. 5 App. p. 111.

of were political acts done by the Lord-Lieutenant in his official capacity, and were assumed to be within the limits of the authority delegated to him by the Crown. The Courts appear to have thought that under these circumstances no action would lie against the Lord-Lieutenant in Ireland; and upon the facts brought to their notice it may well be that no action would lie against him anywhere.

In the same case occur the following remarks with reference to a Governor not regarded as a Viceroy: "If the Governor cannot claim exemption from being sued in the courts of the colony in which he holds that office, as a personal privilege, simply from his being Governor, and is obliged to go further, his plea must then show by proper and sufficient averments that the acts complained of were acts of State policy within the limits of his commission, and were done by him as the servant of the Crown, so as to be, as they are sometimes shortly termed, acts of State. A plea, however, disclosing these facts would raise more than a question of personal exemption from being sued, and would afford an answer to the action not only in the courts of the colony, but in all courts."[1]

In a subsequent part of the same judgment[2] it is said:—"Let it be granted that for acts of power done by a Governor under and within the limits of his commission he is protected, because in doing them he is the servant of the Crown and is exercising its sovereign authority; the like protection

[1] L. R. 5 App. p. 107. [2] Ibid. p. 111.

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cannot be extended to acts which are wholly beyond the authority confided to him. Such acts, though the Governor may assume to do them as Governor, cannot be considered as done on behalf of the Crown, nor to be in any proper sense acts of State. When questions of this kind arise, it must necessarily be within the province of municipal courts to determine the true character of the acts done by the Governor, though it may be that, when it is established that the particular act in question is really an act of State policy done under the authority of the Crown, the defence is complete, and the Courts can take no further cognizance of it."

In an action against the Governor of Jamaica for assault and false imprisonment in suppressing a rebellion in that colony[1] a colonial Act of Indemnity was set up as a defence. "That such an Act was thought to be necessary, and that it was alone relied on as a defence to the action, raises a strong presumption that it had been thought that the action might but for this Act have been maintained. It is to be observed, however, that the facts of the rebellion and its suppression were averred in the plea by way of introduction to the Act of Indemnity; and Mr. Justice Willes, in delivering the judgment of the Exchequer Chamber, after saying that the Court had discussed the validity of the defence upon the only question argued by counsel, viz., the effect of the Colonial Act, adds, 'but we are not to be understood as thereby inti-

[1] *Phillips* v. *Eyre*, L. R. 4 Q. B. 225; 6 Q. B. I.

mating that the plea might not be sustained upon more general grounds, as showing that the acts complained of were incident to the enforcement of martial law.'"[1]

Mr. Westlake, in his Private International Law,[2] cites this case as exemplifying the principle that no act can be treated in England as a wrong on the part of any defendant, in whom it is not a wrong by the law of the country where it was done, whether the law did not regard him as a wrongdoer at the time, or whether he has since been able to justify it in that country by the enactment of an indemnity.

The tendency of the decisions therefore seems to be towards exempting the Governors of colonies from liability to answer in civil actions for acts of State in the courts both of their governments and of England.

There is no ground whatever for saying that the Governor of a colony cannot give his official sanction to a legislative measure in which he may be individually interested. It might as well be asserted that the Sovereign of these realms could not give assent to a Bill in Parliament in which the Sovereign was personally concerned.[3]

In an action for libel by the Governor of a colony he cannot be compelled to produce copies of despatches, reports, and other communications that have passed between himself, as Governor, and

[1] L. R. 5 App. p. 110.
[2] 3rd ed. p. 237.
[3] *Phillips* v. *Eyre*, L. R. 4 Q. B. p. 244.

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H.M.'s Secretary of State for the Colonies, or between himself, as Governor, and the Royal Commissioner appointed to inquire into the affairs of the colony, or between the Secretary of State and such a Royal Commissioner, such documents having been acquired and held by him in his capacity of Governor of one of H.M.'s colonies.[1]

A colonial government is not a corporation and cannot be effectually served with a writ, nor will an order for substituted service be made.[2] But under the New South Wales Act, 39 Vict. No. 38, the government of that colony is liable to be sued in an action of tort.[3] So also the Government of the Straits Settlements under the Crown Suits Ordinance Act, 1876.[4] By the New Zealand Act, 35 Vict. c. 49, claims against Her Majesty arising in that colony may be preferred by Petition of Right.[5]

2. In criminal proceedings.

II. Liability to criminal proceedings for acts committed in his government.

The Act known as the Governors' Act, 11 & 12 Will. 3, c. 12, enacted that if any governor, lieutenant-governor, or commander-in-chief of any plantation or colony within H.M.'s dominions beyond the seas shall . . . be guilty of oppressing any of H.M.'s subjects beyond the seas within their respective commands, or shall be guilty of

[1] *Hennessy* v. *Wright*, L. R. 21 Q. B. D. 509.
[2] *Sloman* v. *Governor and Government of New Zealand*, L. R. 1 C. P. D. 563.
[3] *Farnell* v. *Bowman*, L. R. 12 App. 643.
[4] *A.-G. of Straits Settlements* v. *Wemyss*, L. R. 13 App. 192.
[5] See *Reg.* v. *Williams*, L. R. 9 App. 418.

any other crime or offence contrary to the laws of this realm or in force within their respective governments or commands, such oppressions, crimes, or offences shall be inquired of, heard, and determined in H.M.'s Court of King's Bench in England, or before such commissioners and in such county as shall be assigned by H.M.'s commission.

This Act was extended by 42 Geo. 3, c. 85, to all persons employed in H.M.'s service in any civil or military capacity out of Great Britain guilty of any crime, misdemeanor, or offence in the execution or under colour or in the exercise of any such employment. It, however, only provided for trial in the King's Bench in England. The latter Act does not extend to felonies, the provision therein for prosecution by way of information by the Attorney-General being interpreted to show that felonies were not contemplated by it, that mode of proceeding not being appropriate to them.[1]

In 1802 Governor Wall was tried at the Old Bailey for the murder of a soldier by excessive flogging at Goree, an island off the coast of Africa, where the accused was at the time Governor.[2] That prosecution was conducted under 33 Hen. 8, c. 23,[3] which empowered the King's Council to issue a commission of oyer and terminer for the trial in any county of murder committed within or without the king's dominions. Governor Wall was found guilty and executed.

[1] *Reg.* v. *Shawe*, 5 M. & S. 403. [2] 28 St. Tr. 51.
[3] Repealed by 9 Geo. 4, c. 31, s. 1, and 9 Geo. 4, c. 74, s. 125.

In 1804 General Picton was indicted for having caused Luisa Calderon, a mulatta, to be tortured in the island of Trinidad, of which he was at the time Governor, in order to induce her to make a confession concerning a robbery committed upon her master.[1] The proceedings spread over six or eight years. The defendant availed himself of the second section of 42 Geo. 3, c. 85, to obtain from the King's Bench a *mandamus* to the Court and Governor of the island to examine persons as to the laws and usages of the island and the proceedings that had been had against Luisa Calderon, and transmit the proofs to England. The case was twice presented to a jury, and on the second occasion a special verdict was found setting out the facts at great length, and submitting to the judgment of the Court of King's Bench whether upon them the defendant was guilty or not guilty of the charge against him. A prolonged argument ensued upon the question, amongst others, whether the Spanish law allowing torture continued to exist after the conquest of the island by England; the counsel for the prosecution contending that it did not, as being contrary to the fundamental principles of the English constitution. The Court postponed giving judgment; and some time afterward respited the defendant's recognizances until they should further order. No further proceedings were taken; and in 1815 General Picton fell at the battle of Waterloo. A note to the report of

[1] 30 St. Tr. 225.

the case mentions that it was thought by the Bar that, had the opinion of the Court been delivered, judgment would have been given against General Picton; but that, upon a consideration of the merits, it would have been followed by a punishment so slight and so little commensurate with the magnitude of the questions embraced by the case, as to have reflected but little credit upon the prosecution.[1]

The above-mentioned statutes of 11 & 12 Will. 3, c. 12, and 42 Geo. 3, c. 85, received discussion in the *Queen* v. *Eyre*,[2] where a *mandamus* to a Metropolitan police magistrate was applied for, directing him to hear the evidence in certain charges preferred against the defendant, and to proceed thereon according to law. The defendant had been Governor of Jamaica in 1865; and he having returned to England and being within the jurisdiction of the magistrate, application was made for warrants or summonses charging him with having, while Governor of Jamaica, illegally proclaimed martial law, and with certain other misdemeanors committed as Governor of the island. On argument the Queen's Bench decided that an offence under the statutes above mentioned was an offence committed on land beyond the seas, for which an indictment might legally be preferred in any place in England, within section 2 of 11 & 12 Vict. c. 42; that that section and the other enactments of the same statute, as to preliminary proceedings before any

[1] 30 St. Tr. col. 955.

[2] L. R. 3 Q. B. 487.

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magistrate in whose jurisdiction the accused might be, applied to charges under the other two statutes; and that the Court of Queen's Bench, where the trial is by them directed to be had, was included in the term "next court of oyer and terminer" in section 20 of the statute of Victoria.

Breaches of official trust, as presently defined, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined either in the place where they were committed, or in England; and the Act 42 Geo. 3, c. 85, is to apply to such offences as if they were mentioned therein.[1] Any person who, by means of his holding or having held an office under Her Majesty the Queen, lawfully or unlawfully obtains possession of or control over any document, sketch, plan, or model, or acquires any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, is guilty of a breach of official trust.[2]

[1] 52 & 53 Vict. c. 52, s. 6.

[2] Ibid. s. 2.

## *Section II.—The Executive Council.*

The Governor is assisted in performing his duties by an Executive Council, the composition and appointment of which varies as the colony enjoys responsible government or not.

[1]In colonies where responsible government does not exist the Executive Council consists of the principal officers of the colony with or without a certain number of unofficial members. They are appointed by the Governor's instructions, or by warrant from the Crown, and can be dismissed by the Crown alone, the Governor having merely a power of suspension.

In colonies possessing responsible government the Governor has the power to appoint or remove members of the Executive Council, it being understood that those who have lost the confidence of the legislature will resign or discontinue to exercise their functions, analogously to the usage in the United Kingdom.[2]

In some cases the Governor can only act with the advice of the Executive Council; but, generally speaking, he is not absolutely precluded from acting without it, if the public interest requires him to do so. But he must in such case conform to the special rules in his instructions.

In the West India colonies possessing represen-

[1] See Rules and Regulations, Colonial Office List.

[2] For distinction between the Ministry and the Executive Council in colonies under responsible government, see Todd's Parliamentary Government in the Colonies, pp. 37–39, 42.

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tative assemblies the Executive Council sits in some cases with the Governor as a Court of Error.

The statute 22 Geo. 3, c. 75, gives power[1] to the Governor and Council of a colony or plantation to remove any person from his office in the colony for absence without reasonable cause or neglect or misbehaviour. This power was decided by the Judicial Committee in *Willis* v. *Sir George Gipps*[2] to apply to judicial offices, and therefore exercisable in the case of a Judge of the Supreme Court of New South Wales. But in that particular case they considered that the Governor and Council ought to have given the Judge some opportunity of being previously heard against the motion, and on that ground reversed the order of amotion.

This decision was approved in *Montagu* v. *Lieutenant-Governor of Van Diemen's Land*,[3] where the appellant had had full notice of the charges against him and had defended himself; and it appearing there were sufficient grounds for the amotion, the Judicial Committee declined to recommend Her Majesty to reverse the order, notwithstanding a slight irregularity in the proceedings in which it was made.

In *Ex parte Robertson*[4] the Judicial Committee refused to consider an appeal against the amotion by the Governor-General and Executive Council of New South Wales of a Commissioner of Crown lands in that colony, on the ground that they did

[1] S. 2.
[2] 5 Moo. P. C. C. 379.
[3] 6 Moo. P. C. C. 489.
[4] 11 Moo. P. C. C. 288.

not enter into the consideration of such acts as were done by the Governor and Council of a colony in the exercise of the power and authority committed to them, whereby they dismissed persons from holding situations in that colony, they holding them not by any patent right, but simply and only during the pleasure of the Governor.

# CHAPTER III.

## LEGISLATIVE POWER.



A COLONIAL Legislature is defined in 26 & 27 Vict. c. 84[1] to mean the authority (other than Her Majesty in Council) competent to make laws for any of Her Majesty's possessions abroad, except India, the Channel Islands, and the Isle of Man. In the subsequent Act to remove doubts as to the validity of colonial laws[2] the above definition is repeated; and a Representative Legislature is defined as any Colonial Legislature which should comprise a legislative body of which one-half are elected by inhabitants of the colony. By the same section the expression "colonial law" is to include laws made for any colony either by such Legislature as aforesaid or by Her Majesty in Council. By the Interpretation Act, 1889,[3] the expression "Colonial Legislature" in that and subsequent Acts of Parliament, and the expression "Legislature," when used in that or subsequent Acts with reference to a British

[1] S. 1; cp. 32 & 33 Vict. c. 11, s. 2.
[2] 28 & 29 Vict. c. 63, s. 1.
[3] 52 & 53 Vict. c. 63, s. 18(7).

possession,[1] shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

A Colonial Legislature is not a delegate of the Imperial Legislature. It is a Legislature restricted in the area of its powers, but within that area unrestricted and not acting as an agent or a delegate.[2]

In the case of *Reg.* v. *Burah*[3] a discussion took place upon the delegation of legislative powers by a law-making body, and the length to which such a body may go in conditional legislation, which is of some interest and importance in regard to legislative powers given to Colonial Legislatures by the Imperial Parliament. In the course of their judgment the Judicial Committee of the Privy Council said[4]: "Their Lordships are of opinion that the doctrine of the majority of the Court" (*i.e.*, of the Court below, that the Indian Legislature was in effect an agent or delegate, acting under a mandate from the Imperial Parliament, which must in all cases be executed directly by itself) "is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which

[1] For definition of "British possession," *vide ante*, p. 2.

[2] *Powell* v. *Apollo Candle Co.*, L. R. 10 App. 282; *Hodge* v. *Reg.*, L. R. 9 App. 117. [3] L. R. 3 App. 889. [4] *Ibid.* p. 904.

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created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself." Subsequently[1] their Lordships added : "Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment) be well exercised either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and in many circumstances it may be highly convenient. The British Statute Book abounds with examples of it." This doctrine was subsequently approved and acted upon in *Powell* v. *Apollo Candle Co.*,[2] where a question arose as to the powers of the New South Wales Legislature,and was applied to the case of the Provincial Legislature of Canada in *Hodge* v. *Reg.*[3]

It has already been pointed out[4] that when a Representative Legislature has once been granted to a colony, the legislative power of the Crown by virtue of prerogative is no longer exercisable. The Crown then stands in the same relation to the colony as it does to the United Kingdom.[5]

[1] L. R. 3 App. p. 906. [2] L. R. 10 App. 282 ; *vide post*, p. 111.
[3] L. R. 9 App. 117, see *post*, p. 92. [4] *Ante*, p. 24.
[5] *Ante*, p. 29. *Re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 148.

## *Section* 1.

The Colonies may be classified according to their form of government as follows[1]:—

A. Class one comprises those in which the Crown has the entire control of legislation, while the administration is carried on by public officers under the control of the Home Government. These are called Crown colonies.

In this class the legislative power is either

*a*. Entirely in the hands of the Governor as sole legislator, as in
Gibraltar,
Labuan,[2]
S. Helena,
Basutoland,[3]
British Bechuanaland;[4] or

*β*. It is exercised by the Governor and a Council nominated by the Crown; this Council's authority again being derived either

(1) From the Crown only, as in
British New Guinea,[5]
Ceylon,

[1] See Rules and Regulations and Introduction, Colonial Office List.

[2] Governor is also Governor of the territory of the British North Borneo Co.

[3] Governed by a Resident Commissioner under the direction of the High Commissioner for South Africa (who also is Governor of Cape Colony).

[4] The Governor of the Cape of Good Hope is the Governor.

[5] Government carried on by an Administrator.

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Sect. 1.

Classification of colonies.

Hong Kong,
Trinidad and Tobago,
S. Lucia,
Seychelles,[1]
Fiji ; or

(2) From Imperial or local law, as in
The Straits Settlements,
Sierra Leone,
Gambia,
The Gold Coast,
Grenada,
Falkland Islands,
*British Honduras,[2]
Lagos,
S. Vincent,
Turks Islands.

In all these colonies, except that marked *, laws may also be made by Order in Council.

Legislative Councils nominated by the Crown consist usually in part of the principal officers of the colony, and in part of unofficial persons.

By Order in Council, Dec. 29, 1887, made under the Foreign Jurisdiction Acts, the Gold Coast Legislative Council may exercise and provide for giving effect to all powers and jurisdiction Her Majesty has acquired in the territories adjacent to the colony. Similarly for Lagos by Order in Council of same date.

[1] Government carried on by an Administrator.

[2] As to the constitution of British Honduras, *vide Hodge* v. *A.-G. for British Honduras*, 2 Moo. P. C. C., N. S., 325.

B. The second class comprises colonies possessing representative institutions, but not responsible government, in which the Crown has no more than a veto on legislation, but the Home Government retains the control of public offices. Here the laws are made by the Governor, with the concurrence of either

α. Two legislative bodies—a Council composed of members nominated by the Crown, and an Assembly composed of elected members; as in

The Bahamas,
Barbados, and
Bermuda; or of

β. A single legislative chamber, partly elective and partly nominated by the Crown, as in

*British Guiana,
Jamaica,
Leeward Islands, the,
*Malta,
*Mauritius,
Natal.

In the colonies marked * the Crown has reserved to itself the right to legislate by Orders in Council. In Natal the Crown has reserved the right to alter or revoke the constitution.

C. Class three consists of colonies possessing representative institutions and responsible government, in which the Crown has only a veto on

legislation, and the Home Government has no control over any public officer except the Governor. Under responsible government the Executive Councillors are appointed by the Governor alone with reference to the exigencies of representative government, the other public officers by the Governor on the advice of the Executive Council. In no appointment is the concurrence of the Home Government requisite. The control of all public departments is thus practically placed in the hands of persons commanding the confidence of a representative legislature. To this class belong

*Canada, the Dominion of,
*Newfoundland,
†Cape of Good Hope,
*New South Wales,
*New Zealand,
*Queensland,
†S. Australia,
†Tasmania,
†Victoria,
Western Australia.

In the colonies marked * the Council or Upper Chamber is nominated by the Crown; in those marked † it is elective. In Western Australia it is nominated for six years from date of first summoning of a Legislative Council, or till the population amounts to sixty thousand, whichever first happens.[1]

[1] Western Australia Constitution Act, 1890 (scheduled to 53 & 54 Vict. c. 26), s. 42.

The following are subject to the authority of the general legislature of the Dominion, Colony, or Group to which they belong, but possess provincial legislatures of their own.

| Name. | Nature of Provincial Legislature. | Subject to |
|---|---|---|
| Ontario | Single elected Assembly | Dominion of Canada. |
| Quebec | Council and Assembly | |
| New Brunswick | Single elected Assembly | |
| [1]Prince Edward's Island | Council and Assembly | |
| Nova Scotia | " " | |
| Manitoba | Single elected Assembly | |
| British Columbia | Single elected Chamber | |
| N.W. Territory | " " | |
| Antigua | Composite Council | Leeward Islands. |
| Montserrat | Nominated Council | |
| S. Kitts, Nevis, and Anguilla | Composite Council | |
| Virgin Islands | Nominated Council | |
| Dominica | Composite Council | |

In colonies without representative assemblies the initiation of all laws belongs in general to the Governor. In colonies having such assemblies it is in many cases provided by local or statute law that the initiation of all measures for the appropriation of public money shall belong to the Governor.

In every colony the Governor has authority to give or withhold assent to laws passed by the other branches or members of the legislature. Without his assent no law is binding.

Laws in some cases are passed with clauses suspending their operation until confirmed by Her Majesty. In other cases Parliament has empowered the Governor to reserve laws for the Crown's assent.

[1] Council elective.

Every law which has received the Governor's assent comes into operation immediately or at the time therein specified, unless it contains a suspending clause. But the Crown retains power to disallow any law; and whenever that power is exercised, the law ceases to operate from the time such disallowance is published in the colony. By the British North America Act, 1867, and the South Africa Union Act, 1877, the disallowance should take place within two years of the law being received from the Governor by the Secretary of State for the Colonies.[1] So also in New South Wales.[2]

In colonies possessing representative assemblies laws purport to be made by the Queen or by the Governor on H.M.'s behalf, or by the Governor alone, with the advice and consent of the Council and Assembly. They are designated Acts almost invariably.

In colonies not having such assemblies laws purport to be made by the Governor with the advice and consent of the Legislative Council, and are designated Ordinances.

In West Indian Islands or African Settlements which form part of any general government every Bill or draft Ordinance must be submitted to the Governor-in-Chief before it receives the assent of the Lieutenant-Governor or Administrator. The Governor-in-Chief may require amendments to be made before the law is brought into operation, or

[1] 30 & 31 Vict. c. 3, s. 56; 40 & 41 Vict. c. 47, s. 26.
[2] 5 & 6 Vict. c. 76, s. 32.

may authorise assent to it on the legislature's engaging to give effect to any recommendation he may have to make by a supplementary enactment.[1]

It was decided in *Devine* v. *Holloway*[2] that the authority of the Governor and Legislative Council under 9 Geo. 4, c. 83, ss. 19 and 20, to make laws and ordinances for the government of New South Wales was not determined by the demise of the Crown.

A Colonial Legislature cannot enact a law which will be binding over persons beyond the limits of its own territory.[3]

The power of the Crown to negative or veto the Bills of colonial legislatures is virtually the right of the Imperial Parliament to limit colonial legislative independence, and is frequently exercised. This check on colonial legislatures is exerted in two forms: (1) the Governor may directly refuse his assent to a Bill; or he may reserve it for the consideration of the Crown, when the Bill does not come into force till it has either explicitly or constructively[4] received the Royal assent, that is, the assent of the English Ministry, that is, the indirect assent of the Imperial Parliament; (2) the Governor may give his assent, and the Bill come into force; but it may be disallowed by the Crown afterwards within two years.[5]

[1] See Rules and Regulations, Colonial Office List.

[2] 14 Moo. P. C. C. 290.

[3] *Macleod* v. *Attorney-General for New South Wales*, L. R. (1891) A. C. p. 458.

[4] *I.e.*, by lapse of time.

[5] Dicey's Law of the Constitution, 105 *seqq.*, *qu. vide* for instances.

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Sect. 2.

Colonies with responsible government.

## *Section 2.*

Imperial Acts of Parliament have been passed from time to time for conferring constitutions or constituent powers upon various colonies. In one case the colony has passed a Constitution Act under the authority of Letters Patent from the Crown and confirmed by an Order in Council.

By 26 & 27 Vict. c. 84 all laws theretofore passed or purporting to have been passed by any Colonial Legislature to declare or alter the constitution of such legislature or any branch thereof, or the mode of appointing or electing the members of the same, shall have and be deemed to have had, from the date at which it shall have received the assent of Her Majesty or of the Governor of the colony on her behalf, the same force and effect for all purposes whatever as if the legislature had possessed full powers of enacting laws for the said objects, and as if all formalities and conditions by Act of Parliament or otherwise prescribed in respect of the passing of such laws had been duly observed.[1]

### Canada.

The British North America Act, 1867,[2] is the foundation of the present Canadian constitution. By it the Queen in Council was empowered to declare by proclamation within six months of the passing of the Act (March 29, 1867) the provinces of Canada, Nova Scotia and New Brunswick to

[1] S. 2. [2] 30 Vict. c. 3.

form the Dominion of Canada,[1] consisting of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick,[2] the two former constituted respectively of the two former provinces of Upper Canada and Lower Canada.[3] On addresses from the Parliament of Canada and the legislatures respectively of Newfoundland, Prince Edward Island and British Columbia, these latter colonies, or any of them, were to be admitted into the Union; and on address from the Parliament of Canada, Rupert's Land and the North-West Territory or either of them.[4] Newfoundland alone now remains outside the Union. The British North America Act, 1871,[5] empowered the Dominion Parliament to establish new provinces and provide for the constitution and administration thereof,[6] and to alter the limits of provinces with the consent of their legislatures,[7] and to legislate for territories not included in any province.[8] Accordingly, the North-West Territories were obtained from the Hudson's Bay Company by purchase in 1869, and out of them was carved the province of Manitoba in 1870. By the British North America Act of 1886[9] the Dominion Parliament was also empowered from time to time to make provision for the representation in itself of any territories forming part of the Dominion, but not included in any province.[10]

[1] S. 3. [2] S. 5. [3] S. 6. [4] S. 146.
[5] 34 Vict. c. 28. [6] S. 2. [7] S. 3.
[8] S. 4. [9] 49 & 50 Vict. c. 35. [10] S. 1; and see s. 2.

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**The Executive Power** remains vested in the Queen,[1] with a Privy Council consisting of members from time to time chosen and summoned by the Governor-General, who may also from time to time remove members.[2] The Privy Council constitutes the Ministry. To the Governor-General in Council or individually are transferred all powers under Acts of the Parliament of Great Britain and Great Britain and Ireland, or of the Legislature of Upper or Lower Canada, Canada, Nova Scotia or New Brunswick, exercisable by the respective Governors or Lieut.-Governors of those provinces in Council or individually.[3] The Queen may authorise the Governor-General to appoint deputies in any part of the Dominion.[4] The command of all armed forces remains vested in the Queen.[5]

**The Legislative Power** is vested in one Parliament for Canada, consisting of the Queen, a Senate, and a House of Commons,[6] holding a session at least once a year,[7] each House with privileges, immunities and powers, to be defined by Act of Parliament, but not to exceed those at the passing of the Act held, enjoyed, and exercised by the Commons House of the Parliament of the United Kingdom.[8]

The members of *the Senate* are summoned to sit for life by the Governor-General in the name of the Queen,[9] but they may resign.[10] They

[1] Act of 1867, s. 9.
[2] S. 11.
[3] S. 12.
[4] S. 14.
[5] S. 15.
[6] S. 17.
[7] S. 20.
[8] 38 & 39 Vict. c. 38, s. 1.
[9] Act of 1867, ss. 24, 29.
[10] Ibid. s. 30.

must be thirty years of age, natural born or naturalised subjects of the Queen, each possessed of property, real or personal, within the province they represent worth $4000, and resident therein.[1] They at present number eighty. The Governor-General may summon three or six additional senators representing equally Ontario, Quebec and the Maritime Provinces (Nova Scotia and New Brunswick, and, if added, Prince Edward Island)[2]; but in such case no other person is to be summoned until each of the three divisions is represented by no more than twenty-four senators.[3] The place of a senator becomes vacant

(1) if he fail to attend for two consecutive sessions;

(2) if he acknowledge allegiance to, or become a subject or citizen of, or entitled to the rights or privileges of a subject or citizen of, a foreign power;

(3) if he become bankrupt or insolvent;

(4) if he be attainted of treason or convicted of felony or any infamous crime;

(5) if he cease to be qualified by property or residence.[4]

*The House of Commons* consists of a number of members elected for five years (unless the House is sooner dissolved)[5] in proportion to population, so that Quebec always has sixty-five members, and the other provinces each a number similarly pro-

[1] S. 23. [2] Ss. 26, 22, 147. [3] S. 27.
[4] S. 31. [5] S. 50.

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portional to its population; the members being readjusted according to decennial censuses.[1] At present the House consists of 215 members. All money bills must originate in the House of Commons,[2] and must be recommended to that House by the Governor-General.[3]

The Governor-General, when a Bill is presented to him for the Queen's assent, may either assent thereto, withhold assent, or reserve it for the signification of the Queen's pleasure.[4] Bills assented to may be disallowed by the Queen in Council within two years after receipt by the Secretary of State from the Governor-General of an authentic copy of the Act.[5] A Bill reserved for the signification of the Queen's pleasure has no force unless within two years from its presentation to the Governor-General he signifies by speech or message to each of the Houses of Parliament, or by proclamation, that it has received the assent of the Queen in Council.[6]

Each province has a Lieutenant-Governor appointed by the Governor-General[7] to hold office during his pleasure, but irremovable within five years of his appointment except for cause assigned, communicated to himself in writing and to the Houses of Parliament by message[8]; with powers the same as or similar to those exercised before the Union by the Governors or Lieutenant-

[1] S. 51. [2] S. 53. [3] S. 54. [4] S. 55.
[5] S. 56. [6] S. 57. [7] S. 58. [8] S. 59.

Governors of Upper Canada, Lower Canada, or Canada.[1] In Ontario and Quebec the Governor appoints his own Executive Council.[2] In Nova Scotia and New Brunswick the constitution of the Executive continues as it existed at the Union until altered.[3]

Each of the Provinces has its own Legislature, of which the Lieutenant-Governor always forms part. In Ontario there is an elective Legislative Assembly[4] composed of 82 members; in Quebec a Legislative Council of 24 nominated members, with the same qualifications as the senators for Quebec, and a Legislative Assembly of 65 elected members;[5] in Nova Scotia a Legislative Council of 21 members nominated for life, and a House of Assembly of 38 representatives elected every four years; in New Brunswick a Legislative Assembly of 41 elected members; in British Columbia a Legislative Assembly of 33 elected members; in Manitoba a Legislative Assembly of 38 members elected for four years; in Prince Edward Island a Legislative Council of 13 and a House of Assembly of 30 members, both elective; in the North-West territories a Legislative Assembly of 22 elected members.

The provisions in the Act of 1867 respecting the Parliament of Canada[6] as to money bills, assent to bills, disallowance of Acts, and signification of pleasure on bills reserved, extend and

[1] S. 65. [2] S. 63. [3] S. 64.
[4] Ss. 69, 70. [5] Ss. 71, 72, 73, 80. [6] See *ante*, p. 80.

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apply *mutatis mutandis* to the provincial legislatures, with the substitution of one year for two years.[1]

Careful provision is made for the distribution of the legislative powers between the Dominion Parliament and the Provincial Legislatures. The legislative authority of the Dominion Parliament extends to all matters not coming within the classes of subjects by the Act of 1867 assigned exclusively to the Legislatures of the Provinces,[2] and particularly and exclusively to all matters coming within the following classes of subjects[3]; viz.,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any mode or system of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Services.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the establishment and maintenance of Marine Hospitals.

[1] S. 90. [2] See below, p. 84. [3] S. 91.

12. Sea coast and inland Fisheries.
13. Ferries between a Province and any British or foreign country or between two Provinces.
14. Currency and coinage.
15. Banking, incorporation of Banks, and the issue of Paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Land reserved for the Indians.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces.

Any matter coming within the above classes

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of subjects is not to be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces.[1]

In each Province the Legislature may exclusively make laws relating to matters coming within the following classes of subjects: viz.,[2]—

1. The amendment from time to time, notwithstanding anything in the Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct Taxation within the Province to raise a revenue for provincial purposes.
3. The borrowing of Money on the sole credit of the Province.
4. The establishment and tenure of provincial Offices, and the appointment and payment of provincial Officers.
5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon.
6. The establishment, maintenance, and management of Public and Reformatory Prisons in and for the Province.
7. The establishment, maintenance, and management of Hospitals, Asylums, Chari-

[1] See below. [2] 30 Vict. c. 3, s. 92.

ties, and eleemosynary institutions in and for the Province, other than marine Hospitals.

8. Municipal institutions in the Province.

9. Shop, saloon, tavern, auctioneer, and other Licences for raising a revenue for provincial, joint, or municipal purposes.

10. Local works and undertakings other than such as are of the following classes:—

    (*a*) Lines of steam and other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

    (*b*) Lines of steamships between the Province and any British or foreign country;

    (*c*) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces.

11. The incorporation of Companies with provincial objects.

12. The solemnisation of Marriage in the Province.

13. Property and civil rights in the Province.
14. The administration of Justice in the Province, including the constitution, maintenance, and organisation of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.
15. The imposition of Punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects above enumerated.
16. Generally all matters of a merely local or private nature in the Province.

In each Province the Legislature may also exclusively make laws for education, subject to provisions protecting denominational schools, the dissentient schools of Protestant and Roman Catholics in Quebec, and the rights or privileges of Protestant or Roman Catholic minorities in relation to education.[1]

The Governor-General appoints the judges of the Superior, District, and County Courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick;[2] in Quebec they are selected from the Bar of that province, and are to be selected in Ontario, Nova Scotia, and New Brunswick from their respective Bars until the laws relative to property and civil rights in

[1] 30 Vict. c. 3, s. 93. [2] S. 96.

those provinces are made uniform.[1] The judges of the Superior Courts hold office during good behaviour, but are removable by the Governor-General on address of the Senate and House of Commons.[2] The power to constitute a general Court of Appeal for Canada given to the Dominion Parliament[3] has been exercised by constituting a Supreme Court in Ottawa having appellate jurisdiction, civil and criminal, throughout the Dominion. There is an appeal from this court to H.M. in Council.[4]

Provision is also made for the creation of a Consolidated Revenue Fund,[5] expenses of collection, &c.,[6] interest of provincial public debts,[7] salary of Governor-General,[8] appropriation of revenue,[9] transfer of stocks, &c.,[10] and public works and property[11] from the Provinces to the Dominion, retention of property in lands, mines, minerals, and royalties by the several Provinces,[12] liability of the Dominion for provincial debts,[13] grants to Provinces by Dominion for support of government,[14] admission free into all the provinces of articles grown, produced, or manufactured in any province,[15] exportation and importation between two provinces,[16] lumber dues in New Brunswick,[17] exemption from taxation of public lands and property,[18] and for a Provincial Consolidated Revenue Fund.[19]

[1] S. 97; see s. 94. [2] S. 99. [3] S. 101.
[4] See *post*, Chap. V. [5] S. 102. [6] S. 103. [7] S. 104.
[8] S. 105. [9] S. 106. [10] S. 107. [11] Ss. 108, 117.
[12] S. 109. [13] Ss. 110–116. [14] Ss. 118–120. [15] S. 121.
[16] S. 123. [17] S. 124. [18] S. 125. [19] S. 126.

P. III. s. 2. [illegible] with [illegible] ment.

Except as otherwise provided by the Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain, or of that of Great Britain and Ireland) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under the Act.[1]

The British North America Act, 1867, has been discussed on several occasions before the Judicial Committee of the Privy Council in appeals to that tribunal from the Canadian courts, especially the provisions of ss. 91, 92; and the following points have been decided by their Lordships.

Until the passing of the Act there was precisely the same relation between the Crown and the provinces which now subsists between the Crown and the Dominion. That statute has not severed the connection between the Crown and the provinces; nor has it made the

[1] 30 Vict. c. 3, s. 129. See *post*, p. 96.

government of the Dominion the only government of Her Majesty in North America. The provisions of the Act nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the provinces. The object of the Act was neither to weld the provinces into one, nor to subordinate provincial government to a central authority; but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the provinces all powers executive and legislative, and all public property and revenues, which had previously belonged to the provinces; so that the Dominion Government should be vested with such of these powers, property, and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the provinces for the purposes of provincial government. But, in so far as regards those matters which by s. 92 are specially reserved for provincial legislation, the legislation of each province continues to be free from the control of the Dominion, and as supreme as it was before the passing of the Act.[1]

[1] *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. pp. 441 *et seqq.*

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Sections 91 and 92 must, in regard to the classes of subjects generally described in s. 91, be read together, and the language of one interpreted and, where necessary, modified by that of the other, so as to reconcile the respective powers they contain and give effect to all of them. Each question should be decided as best it can, without entering more largely than is necessary upon an interpretation of the statute.[1]

Subjects, which in one aspect and for one purpose fall within s. 92, may in another aspect and for another purpose fall within s. 91.[2]

The words "property and civil rights in the province" in s. 92, sub-s. 13, include rights arising from contract (which are not in express terms included under s. 91), and are not limited to such rights only as flow from the law—*e.g.*, the *status* of persons. And the words "regulation of trade and commerce" in s. 91, sub-s. 2, include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and, it may be, general regulation of trade affecting the whole Dominion; but do not include the regulation of the contracts of a particular business or trade, such as the business of fire insurance in a single province; and therefore do not conflict with the power over property and civil rights conferred by s. 92. Consequently the

[1] *Citizens Insurance Co.* v. *Parsons; Queen Insurance Co.* v. *same*; L. R. 7 App. 96.

[2] *Hodge* v. *Reg.*, L. R. 9 App. 117.

Ontario Act, 39 Vict. c. 24, as to fire insurance policies entered into or in force in Ontario on property therein situate were held valid.[1]

The Dominion Controverted Elections Act, Canadian Statute, 37 Vict. c. 10, does not contravene s. 92, sub-s. 14, of the British North America Act, 1867, that sub-s. not relating to election petitions, while s. 41 reserved to the Canadian Parliament the power of creating a jurisdiction to determine them. The Canadian Parliament has power to commit such jurisdiction to the existing provincial courts.[2]

The provision in the Dominion Act, 40 Vict. c. 41, s. 28, that the judgment of the Court of Appeal in matters of insolvency shall be final, was held to be within the competency of the Canadian Parliament under s. 91 of the British North America Act, 1867, and not to infringe the exclusive power given to the provincial legislatures by s. 92; nor to interfere with the Queen's prerogative to allow such appeals as an act of grace.[3]

The Canada Temperance Act, 1878, which in effect, whenever throughout the Dominion put in force, uniformly prohibits the sale of intoxicating liquors except in wholesale quantities or for certain specified purposes, regulates the traffic in the excepted cases, makes sales of liquor in violation of the prohibitions and regulations contained in

[1] *Citizens Insurance Co.* v. *Parsons*; *Queen Insurance Co.* v. *same*; L. R. 7 App. 96.

[2] *Valin* v. *Langlois*, L. R. 5 App. 115.

[3] *Cushing* v. *Dupuy*, L. R. 5 App. 409.

the Act criminal offences, punishable by fine, and for the third or subsequent offence by imprisonment, was held to be within the legislative competence of the Dominion Parliament under ss. 91, 92 (sub-ss. 9, 13, 16) of the British North America Act, 1867; the objects and scope of the Act being general, viz., to promote temperance by means of a uniform law throughout the Dominion; and relating to the peace, order, and good government of Canada, and not to the class of subjects "property and civil rights"; nor does provision for the special application of the Act to particular places alter its character as general legislation.[1]

This last case was explained in *Hodge* v. *Reg.*,[2] in which it was decided that the Liquor Licence Act of 1877, c. 181, Revised Statutes of Ontario, making regulations in respect of ss. 4 and 5 in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., does not in respect of those sections interfere with the "general regulation of trade or commerce," but comes within s. 92, sub-ss. 8, 15, 16, of the British North America Act, 1867, and is within the power of the Provincial Legislature; which has power, further, to entrust to a Board of Commissioners authority to enact regulations of the above character, and thereby to create offences and annex penalties thereto. Their Lordships in

[1] *Russell* v. *Reg.*, L. R. 7 App. 829.
[2] L. R. 9 App. 117.

giving judgment stated[1] that the provincial legislatures are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in s. 92, it conferred powers not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and ample within the limits prescribed by s. 92 as the Imperial Parliament in the plenitude of its power possessed or could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make bye-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

The Canadian Act, 37 Vict. c. 103, creating a corporation with power to carry on certain definite kinds of business within the Dominion, is within the legislative competence of the Dominion Parliament; the fact that the corporation confined the exercise of its powers to one province and to local and provincial objects not affecting its *status* as a

[1] L. R. 9 App. p. 132.

corporation, or rendering its original incorporation illegal as *ultra vires* of the Dominion Parliament. Nor could the corporation be prohibited generally from acting as such within the province, or restrained from doing specified acts in violation of the provincial law on a petition not directed and adapted to that purpose.[1]

The Quebec Act, 33 Vict. c. 58, purporting to relieve by legislation the society called L'Union S. Jacques de Montréal, appearing on the face of the Act to have been in a state of extreme financial embarrassment, was held to be within the legislative capacity of that legislature, as relating to a matter merely of local or private nature in the province, assigned by s. 92 of the British North America Act, 1867, to the exclusive competency of the provincial legislature, and as not falling within the category of bankruptcy, insolvency, or any other class of subjects reserved by s. 91 for the exclusive authority of the Dominion Parliament.[2]

The Act of New Brunswick, 33 Vict. c. 47, "to authorise the issuing of debentures on the credit of the lower district of the parish of St. Stephen in the county of Charlotte," empowering the majority of the inhabitants of that parish to raise by local taxation a subsidy designed to promote the construction of a railway extending beyond the limits of the province, but already authorised by statute, is within the legislative capacity of the

[1] *Colonial Building and Investment Association* v. *A.-G. of Quebec*, L. R. 9 App. 157.

[2] *L'Union S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31.

provincial legislature under s. 92, sub-s. 2, of the British North America Act, 1867; the Act relating to "a matter of a merely local or private nature in the province," assigned by that section to the exclusive competency of the provincial legislature, and not relating to the railway or any local work or undertaking within the subjects excepted in sub-s. 10 (*a*) of the above section.[1]

The Quebec Act, 45 Vict. c. 22, imposing certain direct taxes on certain commercial provinces carrying on business in the province, is *intra vires* of the provincial legislature. A tax imposed on banks carrying on business within the province, varying in amount with the paid-up capital and the number of its officers, whether or not their principal place of business is in the province, is direct taxation within s. 92, sub-s. 2, of the British North America Act, 1867, the meaning of which is not restricted in this respect by either sub-ss. 2, 3, or 15 of s. 91. And similarly as to insurance companies taxed in a sum specified by the Act.[2]

The clauses of the Quebec Act, 39 Vict. c. 7, imposing a tax on certain policies of assurance and certain receipts or renewals are not authorised under s. 92, sub-ss. 2 and 9, of the British North America Act of 1867. A Licence Act, providing that the price of a licence shall consist of an adhesive stamp payable in respect of each transaction, not by the licensee, but by the person who

[1] *Dow* v. *Black*, L. R. 6 P. C. 272.
[2] *Bank of Toronto* v. *Lambe*, L. R. 12 App. 575.

deals with him, is virtually a Stamp Act. The imposition of a stamp duty on policies, renewals, and receipts, with provision for avoiding the policy, renewal, or receipt in a court of law if the stamp is not affixed, is not within the terms of an Act authorising the imposition of direct taxation.[1]

The Quebec Act, 43 & 44 Vict. c. 9, imposing a duty of ten cents on every exhibit filed in court in any action depending therein, was held to be *ultra vires* of the provincial legislature as not direct taxation within s. 92, sub-s. 2, of the British North America Act, 1867, in order to the raising of revenue for provincial purposes; nor within s. 92, sub-s. 14, of the same Act, as relating to the administration of justice within the province; nor within s. 65, not having been done by the authority of the Lieut.-Governor in Council, nor in aid of the Building and Jury Fund.[2]

The powers conferred by s. 129 of the British North America Act of 1867 on the provincial legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of Canada, are precisely co-extensive with the power of direct legislation with which those bodies are invested by the other sections of the Act. Thus 22 Vict. c. 66 of the Parliament of Canada, creating a corporation with corporate existence and rights in Ontario and Quebec, could not be repealed or modified by the legislature of either province or by both legislatures

[1] *A.-G. for Quebec* v. *Queen Insurance Co.*, L. R. 3 App. 1090.
[2] *A.-G. for Quebec* v. *Reed*, L. R. 10 App. 141.

conjointly, but only by the Parliament of the Dominion. Hence the Quebec Act, 38 Vict. c. 64, assuming to repeal and amend the said 22 Vict. c. 66, and (1) to destroy a corporation created by the Canadian Parliament and substitute a new one, (2) to alter materially the class of persons interested in the corporate funds, and not merely to impose conditions on the transaction of business by the corporation within the province, was invalid.[1]

By s. 108 of the British North America Act, 1867, read in connection with the third schedule, the railway belonging to Nova Scotia, called the Windsor Branch, passed to and became vested in the Dominion; the Parliament of which by 37 Vict. c. 16, authorising a transfer of the railway to the appellant, did not, on its true construction, enact such transfer in derogation of the respondents' rights under an agreement of 22 Sept. 1871, entered into with the respondents by the Provincial Government in pursuance of an obligation existing at the date of the statutory transfer. And *quære* whether it could.[2]

Section 109 of the British North America Act, 1867, gives to each province the entire beneficial interest of the Crown in all lands within its boundaries which at the time of the Union were vested in the Crown, subject to such rights as the Dominion can maintain under ss. 108 and 117.

[1] *Dobie* v. *Temporalities Board of Presbyterian Church of Canada*, L. R. 7 App. 136.

[2] *Western Counties Railway Co.* v. *Windsor and Annapolis Railway Co.*, L. R. 7 App. 178.

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Lands situate in Ontario reserved "for the present" to Indian tribes by proclamation in 1763 as hunting grounds, and surrendered in 1873 to the Government of the Dominion for the Crown subject to a qualified privilege of hunting and fishing, held vested in the Crown subject to the Indian title, which was "an interest other than that of the Province in the same" within the meaning of s. 109; but by the surrender the entire beneficial interest in them held to have been transmitted, subject to the privilege, to the Province in terms of s. 109. The Dominion power of legislation over lands reserved for the Indians is not inconsistent with the beneficial interest of the Province therein.[1]

Lands in Canada escheating to Crown for defect of heirs belong to the province in which they are situated, and not to the Dominion; the casual revenue arising from lands escheated to the Crown after the Union being reserved by s. 109 of the British North America Act, 1867, to the provinces, —the words "lands, mines, minerals, and royalties" therein including royalties in respect of lands, such as escheats.[2]

A conveyance by the province of British Columbia to the Dominion of public lands, being in substance an assignment of its right to appropriate the territorial revenues arising therefrom, does not imply any transfer of its interest in revenue arising from the prerogative rights of the

[1] *St. Catherine's Milling and Lumber Co.* v. *Reg.*, L. R. 14 App. 46. [2] *A.-G. of Ontario* v. *Mercer*, L. R. 8 App. 767.

Crown. The precious metals in, upon, and under such lands are not incidents of the land, but belong to the Crown, and under s. 109 beneficially to the Province; and an intention to transfer them must be expressed or necessarily implied.[1]

All property and revenues reserved to the provinces by ss. 109 and 126 of the British North America Act, 1867, are vested in Her Majesty as sovereign head of each province. Consequently the Provincial Government of New Brunswick, being a simple contract creditor of the Maritime Bank of the Dominion of Canada in respect of public moneys of the province deposited in the name of the Receiver-General of the province, was held entitled to payment in full over the other depositors and simple contract creditors of the bank, its claim being for a Crown debt to which the prerogative attaches.[2]

The Act 34 & 35 Vict. c. 28, authorising the Parliament of Canada to provide for the administration, peace, order, and good government of any territory not for the time being included in any province, vests in that Parliament the utmost discretion of enactment for the attainment of those objects. Accordingly the Canadian Act, 43 Vict. c. 25, is *intra vires* of the legislature; and s. 76, sub-s. 7, prescribing that full notes of evidence be taken, is literally complied with when those notes are taken in shorthand.[3]

[1] *A.-G. of British Columbia* v. *A.-G. of Canada*, L. R. 14 App. 295.

[2] *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.

[3] *Riel* v. *Reg.*, L. R. 10 App. 675.

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If a court of law in Canada should come to the conclusion that a particular enactment was not calculated as a matter of fact and policy to secure peace, order, and good government, they would not be entitled to regard it, being directed towards those objects, as *ultra vires* of the Dominion Parliament's power to enact under the above first mentioned Act.[1]

**British Columbia.**

The British Columbia Government Act, 1870,[2] empowered Her Majesty to make, revoke, or alter Orders in Council for constituting a Legislature consisting of *the Governor and a Legislative Council* for the colony, and for making provisions and regulations respecting the constitution, power, and proceedings of the Legislature in either branch thereof, the number, appointment, and election of the members of the Legislative Council, and their tenure of office, and generally;[3] also for empowering the Governor by proclamation to determine the qualification of electors and elective members of the Legislative Council, and to make provision for dividing the colony into convenient electoral districts, registering voters, completing and revising lists of voters, appointing returning officers, issuing, executing, and returning election writs, taking the poll, deciding on disputed returns, &c.[4]

[1] *Riel* v. *Reg.*, L. R. 10 App. 675.
[2] 33 & 34 Vict. c. 66.
[3] S. 3.
[4] S. 4. See *ante*, p. 81.

### Newfoundland.

At present the Legislature consists of a Legislative Council not exceeding 15 in number, and a House of Assembly of 36 members, elected under manhood suffrage. By the Act for amending the constitution[1] Her Majesty was empowered, by commissions and instructions to the Government of Newfoundland under the Great Seal of the United Kingdom, to establish a property qualification for members of the Assembly of not more than £100 net annual income, or property clear of incumbrances not exceeding £500 in value;[2] also to fix the length of residence entitling to vote at elections, to be elected as members of the Assembly, but at not more than two years next preceding any election;[3] also to restrain the Assembly from appropriating to the public service in the island any part of the public revenue unless previously recommended or asked by or on behalf of Her Majesty;[4] also to require all elections to the Assembly to be simultaneous and completed within a limited time.[5] (The rest of the Act is repealed.)

### Australasia.

By 48 & 49 Vict. c. 60 provision was made for constituting a **Federal Council of Australasia**, in which each of the colonies mentioned below[6]

[1] 5 & 6 Vict. c. 120. [2] S. 1.
[3] S. 2. [4] S. 3. [5] S. 4.
[6] Fiji, New Zealand, New South Wales, Queensland, Tasmania, Victoria, Western Australia, S. Australia, and any other colonies

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should be represented by two members, except Crown colonies, who were to be represented by one each,[1] to be appointed or provided by the legislature of any colony;[2] a session to be held at least once in two years;[3] a majority of the whole number of members of the Council for the time being, representing a majority of the colonies with respect to which the Act is in operation, to constitute a quorum.[4] Saving H.M.'s prerogative and subject to the provisions of the Act, the Council is to have legislative authority in respect to the following matters:[5] viz.,—

*a.* The relations of Australasia with the islands of the Pacific:

*b.* Prevention of the influx of criminals:

*c.* Fisheries in Australasian waters beyond territorial limits:

*d.* The service of civil process of the Courts of any colony within H.M.'s possessions in Australasia out of the jurisdiction of the colony in which it is issued:

*e.* The enforcement of judgments of courts of law of any colony beyond the limits of the colony:

*f.* The enforcement of criminal process beyond the limits of the colony in which it is issued, and the extradition of offenders (including deserters of wives and children,

hereafter created in Australasia, or those of the said colonies in which the Act is in operation (s. 1).

[1] S. 5. [2] S. 6. [3] S. 4.
[4] S. 13. [5] S. 15.

and deserters from the imperial or colonial naval or military forces):

*g.* The custody of offenders on board ship belonging to H.M.'s colonial Governments beyond territorial limits:

*h.* Any matter which at the request of the legislatures of the colonies Her Majesty by Order in Council shall think fit to refer to the Council:

*i.* Such of the following matters as may be referred to the Council by the legislatures of any two or more colonies, that is to say:—

(*a*) general defences,

(*b*) quarantine,

(*c*) patents of inventions and discovery,

(*d*) copyright,

(*e*) bills of exchange and promissory notes,

(*f*) uniformity of weights and measures,

(*g*) recognition in other colonies of any marriage or divorce duly solemnised or decreed in any colony,

(*h*) naturalisation of aliens,

(*i*) *status* of corporations and joint-stock companies in other colonies than that in which they have been constituted, and any other

matter of general Australian interest with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application;

but in such cases the Acts of the Council shall extend only to the colonies by whose legislatures the matter shall have been so referred to it, and such other colonies as may afterwards adopt the same.

Every Bill in respect of the matters marked (*a*), (*b*), or (*c*) shall, unless previously approved by Her Majesty through one of her principal Secretaries of State, be reserved for the signification of H.M.'s pleasure.[1]

The Governors of any two or more colonies may, on an address of the Legislature, refer to the Council questions relating to those colonies or their relations with one another, which the Council may determine by Act of Council.[2]

The usual provisions are made as to the Royal assent to Bills, disallowance of Acts, and reservation of Bills for the signification of H.M.'s pleasure; but disallowance must be within one year after receipt of a copy of the Act by the Secretary of State, and Bills reserved must, to have any force,

[1] S. 15. [2] S. 16.

be assented to by H.M. within one year of their presentation for such assent to the Governor.[1]

If in any case the provisions of an Act of Council shall be repugnant to or inconsistent with the law of any colony affected thereby, the former is to prevail, and the latter is to have no operation so far as such repugnance or inconsistency extends.[2]

The Council's expenditure is to be contributed and paid by the colonies in proportion to their population.[3]

The Council may make representations or recommendations to H.M. as to any matters of general Australasian interest, or to the relation of H.M.'s possessions in Australasia with the possessions of foreign powers.[4]

The Act shall not come into operation in respect of any colony till the legislature of such colony has passed an Act or Ordinance declaring it to be of force therein from a certain day, nor until four colonies at the least have passed such Act or Ordinance;[5] and it shall cease to be in operation with respect to any colony the legislature of which passes an Act or Ordinance declaring that it shall cease to be in force therein; but all Acts of Council passed while this Act was in operation in such colony, shall continue in force therein unless altered or repealed by the Council.[6]

The Council met for the first time in Jan. 1886,

[1] Ss. 17, 18, 19. [2] S. 22. [3] S. 26.
[4] S. 29. [5] S. 30. [6] S. 31.

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and has met three times since; representatives have attended from Victoria, Queensland, Tasmania, Fiji, Western Australia, and South Australia.

By 25 & 26 Vict. c. 11 every Act passed by the Legislative Council of New South Wales, Victoria, Van Diemen's Land, or South Australia to establish, instead of the Legislative Council, a Council and House of Representatives or other separate Legislative Houses, to consist respectively of such members, to be appointed or elected respectively by such persons and in such manner, as by such Act should be determined, and to vest therein the powers and functions of the Legislative Council for which the same might be substituted, and assented to in Her Majesty's name by the Governor, shall be deemed to be and to have been from the date of such assent as valid and effectual for all purposes whatever as if the same Act had been reserved for the signification of Her Majesty's pleasure, and as if the same had been duly laid before both Houses of Parliament, and as if Her Majesty's assent had been duly given to the same and signified in the colony at the date aforesaid.[1]

Further, every Act passed by any colonial legislature established under any such Acts or Act as aforesaid for altering the constitution or mode of election or appointment of any or either of the legislative bodies composing such legislature, which may have been at any time theretofore assented to

[1] S. 1.

in Her Majesty's name by the Governor, shall be deemed to be and to have been from the date of such assent as valid and effectual for all purposes whatever as if it had been reserved for the signification of Her Majesty's pleasure therein, and as if Her Majesty's assent had been duly given thereto and signified in the colony at the date last aforesaid.[1]

**New South Wales.**

The Imperial Act, 18 & 19 Vict. c. 54, empowered Her Majesty to assent to the Bill passed by the Legislative Council of New South Wales in 1853 to confer a Constitution on the colony, and contained in Schedule I. of the Act.[2] The provisions in former Acts respecting the allowance and disallowance of Bills by Her Majesty, and the reservation of Bills for the signification of Her Majesty's pleasure thereon, are maintained.[3] Power is given to the new legislature to alter or repeal the provisions of the scheduled Bill.[4] By this Bill, which became the Act of New South Wales 17 Vict. No. XLI., the Legislature consists of Her Majesty, together with a Legislative Council and a Legislative Assembly; taxation and appropriation Bills to originate in the Assembly.[5]

The *Legislative Councillors*, to the number of not less than twenty-one, are appointed by the Governor with the advice of the Executive Council for life, and must be twenty-one years of age, natural born or naturalised subjects of Her Majesty;

[1] 25 & 26 Vict. c. 11. s. 3. [2] S. 1. [3] S. 3.
[4] S. 4. [5] 17 Vict. No. XLI., s. 1.

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not less than four-fifths of their number being persons not holding any office of emolument under the Crown, except officers of Her Majesty's sea and land forces.[1] Members may resign by letter to the Governor,[2] and vacate their seats by absence without permission for two successive sessions,[3] or by becoming subjects or citizens of any foreign power, or becoming bankrupt, or being attainted of treason, or convicted of felony or any infamous crime.[4] At present the Legislative Council consists of seventy members.

The *Legislative Assembly* is elected by the inhabitants of the colony, being twenty-one years of age, free natural born or naturalised subjects of Her Majesty, or legally made citizens of the colony, with a property qualification. But no man can vote who has been attainted or convicted of treason or felony or other infamous offence in any part of H.M.'s dominions, unless he have been pardoned or have undergone his sentence; nor unless at the time of registration he have paid up all his rates and taxes, except such as have become payable during three calendar months next before such registration.[5] At present the Legislative Assembly consists of 141 members. Any free person qualified and registered as a voter in any electoral district may be elected a member

[1] Ss. 2, 3. [2] S. 4.

[3] *Vide A.-G. of Queensland* v. *Gibbon*, L. R. 12 App. 442, decided under a similar provision in the Queensland Constitution Act of 1867; see *post*, p. 119. [4] S. 5.

[5] S. 11. For the electoral districts see s. 13.

of the Assembly;[1] except a member of the Legislative Council.[2] Any person holding an office of profit under the Crown is incapable of being elected, sitting, or voting as a member of the Legislative Assembly, unless he be Colonial Secretary, Colonial Treasurer, Auditor-General, Attorney-General, or Solicitor-General, or one of not more than five additional officers whom the Governor with the advice of the Executive Council may from time to time by notice in the Government *Gazette* declare capable of being so elected;[3] or unless he is an officer in H.M.'s navy or army.[4] Ministers of religion are incapable of being elected to or of sitting or voting in the Assembly.[5] Members of the Assembly may resign their seats by writing under their hands addressed to the Speaker.[6] A member vacates his seat by absence for one whole session without permission, or by becoming a subject or citizen of any foreign power, or becoming bankrupt or insolvent or a public defaulter, or by being attainted of treason or convicted of felony or any infamous crime.[7] Contractors for the public service and persons interested in such contracts are disqualified from being summoned or elected, or sitting or voting, as members of the Legislative Council or Assembly; and persons entering into such contracts vacate their seats; but the disqualification does not extend to contracts with an incorporated or trading company

[1] S. 16. [2] S. 17. [3] S. 18. [4] S. 19.
[5] S. 20. [6] S. 25. [7] S. 26.

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consisting of more than twenty persons.[1] A penalty of £500 is imposed on persons thus disqualified for sitting and voting.[2] One session at least of Parliament must be held each year.[3] The Legislature has power to alter any provision of the Constitution Act, but any Bill for such a purpose must be passed with the concurrence of two-thirds of the number for the time being of the Legislative Council and Assembly respectively, and must be reserved for the signification of H.M.'s pleasure thereon, and a copy thereof laid before both Houses of the Imperial Parliament for at least thirty days previously.[4] All existing laws are continued in operation until altered by the Legislature,[5] as also all Courts, &c.[6] The Legislature may make laws as to sale and other disposal of waste lands,[7] and for levying customs duties.[8] Provision is made for a consolidated revenue fund,[9] expenses of collection, &c.,[10] appropriation of revenue,[11] and recommendation by Governor of money votes.[12]

By s. 133 of the New South Wales Customs Regulation Act, 1879, it was enacted that whenever any article of merchandise then unknown to the collector is imported, which, in the opinion of the collector or the commissioners, is apparently a substitute for any known dutiable article, or is apparently designed to evade duty, but possesses

[1] S. 28; *vide Miles* v. *McIlwraith*, L. R. 8 App. 120, decided under a similar provision in the Queensland Constitution Act, 1867; see *post*, p. 118. [2] S. 29. [3] S. 31. [4] S. 36; but *vide ante*, p. 106. [5] S. 41. [6] S. 42. [7] S. 43. [8] S. 45. [9] S. 47. [10] S. 48. [11] S. 53. [12] S. 54.

properties in the whole or in part which can be used or were intended to be applied for a similar purpose as such dutiable article, it shall be lawful for the Governor to direct that a duty be levied on such article at a rate to be fixed in proportion to the degree in which such unknown article approximates in its qualities or uses to such dutiable article; and such rate then fixed shall be published in a Treasury order in the *Gazette* and one other newspaper published in Sydney, and exhibited in the Long Room or other public place in the Customs House, and a copy of all such Treasury orders shall, without unnecessary delay, be laid before both Houses of Parliament. It was held by the Judicial Committee of the Privy Council in *Powell* v. *Apollo Candle Co.*[1] that this section was within the plenary powers of legislation conferred upon the New South Wales Legislature by ss. 1 and 45 of the Constitution Act, scheduled to 18 & 19 Vict. c. 54. And further that duties levied by an Order in Council issued under the section are really levied by authority of the Legislature and not of the Executive; and that the opinion of the collector, mentioned in the section, whether right or wrong, authorises the action of the Governor.

In *Harris* v. *Davies*[2] it was decided by the Judicial Committee of the Privy Council that the Legislature of New South Wales had power to repeal the statute 21 Jac. 1, c. 16, s. 6, as to costs

[1] L. R. 10 App. 282; see *ante*, p. 67. [2] L. R. 10 App. 279.

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in actions for slander where less than 40*s.* damages are recovered, and had impliedly done so by 11 Vict. No. 13, s. 1, which placed an action for words spoken on the same footing as to costs and other matters as an action for written slander.

A member of the Legislative Assembly of New South Wales having entered the Chamber within a week after it had passed a resolution that he be suspended from the service of the House, he was removed therefrom and prevented from re-entering. In an action of trespass against the Speaker it was held, on appeal to the Judicial Committee of the Privy Council, that the resolution must not be construed as operating beyond the sitting during which the resolution was passed; and, further, that the standing order of the Legislative Assembly, adopting so far as is applicable to its proceedings the rules, forms, and usages in force in the British House of Commons, and assented to by the Governor, was valid, but must be construed to relate only to such rules, forms, and usages as were in existence at the date of the order. The powers incident to or inherent in a Colonial Legislative Assembly are such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute, and do not extend to justify punitive action, or unconditional suspension of a member during the pleasure of the Assembly.[1]

[1] *Barton* v. *Taylor*, L. R. 11 App. 197.

**Victoria.**

By 18 & 19 Vict. c. 55 Her Majesty in Council was empowered to assent to the Bill passed by the Legislative Council of the colony for establishing a constitution in and for the colony of Victoria, and contained in Schedule I. to the Act.[1] Power was given by the same Act to the Legislature of Victoria to alter or repeal any of the provisions of the scheduled Bill.[2] By the Bill which thus became the Constitution Act were established a Legislative Council and a Legislative Assembly, to meet at least once a year,[3] both elective ;[4] the members of the former body retiring in rotation,[5] those of the latter being elected for five (now three) years, subject to the Governor's power of dissolution.[6]

Members of either House may resign by writing addressed to the Governor or Speaker respectively ;[7] and vacate their seats by failure to attend for one entire session without permission, or becoming subjects or citizens of any foreign power, or becoming bankrupt or insolvent, or being attainted of treason, or convicted of felony or any infamous crime, or becoming *non compos mentis*.[8] Public contractors are incapable of being elected, sitting, or voting as members of the Legislature, under a penalty.[9] Existing laws are maintained in force until altered.[10] Provisions are made for convocation, prorogation,

[1] S. 1. [2] S. 4; and see ss. 60, 61 of the Colonial Act.
[3] S. 1 of the Colonial Act. [4] Ss. 2, 10. [5] S. 3.
[6] S. 19. [7] Ss. 8, 23. [8] S. 24.
[9] S. 25, 26; see *post*, p. 117. [10] S. 40.

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and dissolution ;[1] standing rules and orders ;[2] definition of privileges ;[3] appointment to public offices ;[4] customs duties ;[5] consolidated revenues ;[6] civil list ;[7] pensions ;[8] waste lands.[9] The Legislature is also empowered to repeal, alter, or vary all or any of the provisions of the Act and substitute others, and to alter the qualification of electors and members, and to establish and vary electoral provinces or districts, &c.[10]

**Van Diemen's Land, or Tasmania.**

By 13 & 14 Vict. c. 59 the Legislature then existing in the colony was empowered to establish therein a Legislative Council, one-third of the members of which to be appointed by Her Majesty and the remainder elected by the inhabitants of the colony.[11] This newly established Legislative Council was also empowered by Act or Acts to establish in the colony, instead of itself, a Council and a House of Representatives, or other separate Legislative Houses, to consist respectively of such members, to be appointed or elected respectively by such persons and in such manner, as by such Act or Acts should be determined, and to vest therein its own powers and functions.[12] This power has been exercised ;[13] and the Legislature of the

[1] S. 28. [2] S. 34. [3] S. 35. [4] S. 37.
[5] S. 43. [6] Ss. 44, 45. [7] Ss. 46, 47. [8] Ss. 49, 50, 51, 52.
[9] S. 54. [10] Ss. 60, 61 ; and see s. 4 of the Imperial Act.
[11] S. 7. [12] S. 32.
[13] 17 & 18 Vict. No. 17, supplemented by 34 Vict. No. 2, and 49 Vict. No. 12.

colony now consists of the Governor, a Legislative Council of 18 members elected for six years, and a House of Assembly of 36 members elected for five years.

**South Australia.**

A constitution was granted to this colony by the Act 13 & 14 Vict. c. 59, by which the Legislature was to consist of the Governor and a Legislative Council of not more than 24 members, of which one-third were to be appointed by Her Majesty, and the rest elected by the inhabitants of the colony.[1] By s. 32 of the Act it was, however, enacted that it should be lawful for the Legislature established thereby to establish in the colony instead of the Legislative Council, a Council and House of Representatives, to be appointed or elected by such persons and in such manner as the Legislature should determine, with the powers and functions of the Legislative Council superseded thereby; any Bill for such purpose to be reserved for the signification of Her Majesty's pleasure thereon, and a copy to be laid before both Houses of Parliament for thirty days at least previously.[2]

These powers have been exercised; and the Parliament of the colony now consists of the Governor, a Legislative Council of 24 members elected by ballot, one-third retiring in rotation every three years, and a House of Assembly of 36 members elected for three years, but liable to

[1] S. 7.

[2] But see *ante*, p. 106.

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dissolution by the Governor. A member of the Council must be thirty years old, a subject of the Queen, and a resident of three years' standing; and an elector must be twenty-one years old, a subject of Her Majesty, on the electoral roll for six months, with a property qualification. A member of the Assembly must be qualified as an elector, and an elector's qualification is the same as that of an elector for the Council without the property.

**Queensland.**

The Act 24 & 25 Vict. c. 44 was passed, among other reasons, to validate and effectuate the Order in Council of June 6, 1859, establishing a Legislature in the colony, and all Acts and proceedings thereof.[1] The Order in Council provided for a nominated Legislative Council and an elective Legislative Assembly, but empowered the Legislature to alter or repeal all the provisions of the Order in Council with certain exceptions.[2] This power has been exercised;[3] and the Legislature consists of the Governor, a Legislative Council or Upper House of 40 members nominated by the Governor for life, and a Legislative Assembly or Lower House of 72 members elected by ballot, every man of twenty-one years of age who has resided six months in one locality having a vote; persons having property, leasehold or freehold, or a Government licence to depasture land, having a vote in the district

[1] See s. 3.
[2] Art. 22.
[3] By 31 Vict. No. 38, of the colony.

where the property is situate as well. No property qualification is required for membership in either House.

The Queensland Constitution Act of 1867[1] by s. 6 enacts that "any person who shall directly or indirectly, himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in the whole or in part, any contract or agreement for or on account of the public service, shall be incapable of being summoned or elected or of sitting or voting as a member of the Legislative Council or Legislative Assembly during the time he shall execute, hold, or enjoy any such contract or any part or share thereof, or any benefit or emolument arising from the same; and if any person, being a member of such Council or Assembly, shall enter into any such contract or agreement, or having entered into it shall continue to hold it, his seat shall be declared by the said Legislative Council or Legislative Assembly, as the case may require, to be void, and thereupon the same shall become and be void accordingly. Provided always that nothing herein contained shall extend to any contract or agreement made, entered into, or accepted by any incorporated company or any trading company consisting of more than twenty persons, where such contract or agreement shall be made, entered into, or accepted for the general benefit of such incorporated or trading company." By s. 7 it is

[1] 31 Vict. No. 38.

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enacted that "if any person by the Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly shall nevertheless be summoned to the said Council, or elected and returned as a member to serve in the said Assembly for any electoral district, such summons or election and return shall and may be declared by the said Council and Assembly, as the case may require, to be void, and thereupon the same shall become and be void to all intents and purposes whatsoever; and if any person under any of the disqualifications mentioned in the last preceding section shall, whilst so disqualified, presume to sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of £500, to be recovered by any person who shall sue for the same in the Supreme Court of Queensland." In an action to recover penalties against the defendant for having, contrary to this enactment, sat in the Legislative Assembly as a member and voted therein, it appeared that McIlwraith, McEacharn & Co. had in 1878, "for and on behalf of the owners of the ship *Scottish Hero*," but contrary to the express direction of the defendant (one of such owners), concluded a charterparty with the local Government; that such charterparty was made in pursuance of an agreement between McIlwraith, McEacharn & Co. and the Government to supply ships of a particular description to carry emigrants, which agreement did not provide for any privity of contract between the owners of such

ships and the Government; that McIlwraith, McEacharn & Co. were the general agents of the defendant to charter ships in which he held shares, and that one of the firm was registered as managing owner of the *Scottish Hero*; and that it was neither alleged nor proved that the Government ever knew that McIlwraith, McEacharn & Co., or any member of that firm, had general authority to bind the defendant, and had acted upon the belief that such general authority continued unrestricted. Under such circumstances it was decided that the Government could not have held the defendant bound to them, and consequently that he was not disqualified under the Act. It was left undecided whether, in the absence of any notice to the Government of such special restriction, the general authority of the agent, if known to the Government, would have sufficed to bind the defendant so as to disqualify him under the Act.[1]

The Queensland Constitutional Act, 1867,[2] provided in ss. 23, 24, that "if any legislative councillor shall for two successive sessions fail to give his attendance without permission, his seat shall thereby become vacant." A councillor absented himself during the whole of three sessions, having previously obtained permission for a year, which period of time in the event covered the whole of the first and part of the second session. It was held that his seat was vacated, the permission not covering two successive sessions.[3]

[1] *Miles* v. *McIlwraith*, L. R. 8 App. 120. [2] 31 Vict. No. 38.
[3] *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442.

**Western Australia.**

By 53 & 54 Vict. c. 26 Her Majesty was empowered[1] by Order in Council to assent to the Bill scheduled in the Act for conferring a constitution on Western Australia. But the provisions of the Acts 13 & 14 Vict. c. 59 and 5 & 6 Vict. c. 76, relating to the giving or withholding Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure thereon and the instructions to Governors in relation thereto, and the disallowance of Bills by Her Majesty, are to apply to Bills passed by the new or any substituted Legislature.[2] The new Legislature has the entire management and control of the waste lands of the Crown in the colony.[3] Power is given to Her Majesty by Order in Council to divide and subdivide the colony and form separate colonies under such form of government and legislature as she may think fit, or to unite any part or parts to any other Australian colony; in which event the scheduled Bill and the Act is to apply as far as practicable to the colony of Western Australia as then existing.[4]

The scheduled Bill established a *Legislative Council* and a *Legislative Assembly*[5] to sit once a year.[6] The *Council* is to consist of 15 members (five to be a quorum),[7] summoned in the first place by the Governor,[8] but after six years from the first

[1] S. 1. [2] S. 2*a*. [3] S. 3. [4] S. 6.
[5] S. 2. [6] S. 4. [7] S. 10. [8] S. 6.

summoning thereof or when the population of the colony has reached 60,000, whichever first happens, to become elective,[1] five members retiring by rotation every two years.[2] No member of the Council is to hold any office of profit under the Crown except political office or in the army or navy.[3] The *Legislative Assembly* consists of 30 members elected by defined electoral districts[4] for four years from the return of the writ, subject to prorogation or dissolution by the Governor;[5] ten to be a quorum.[6] Members of either Council or Assembly must be natural born or naturalised subjects of Her Majesty, twenty-one years of age, seised at law or in equity of a freehold estate within the colony of the net value of £500, or the yearly value of £50, and possessed thereof for at least one year previous to the election.[7] No person can be a member of either House if he

(1) be a member of the other House;
(2) be a judge of the Supreme Court;
(3) be the sheriff of Western Australia;
(4) be a clergyman or minister of religion;
(5) be an undischarged bankrupt or liquidating or arranging debtor; or
(6) has been in any part of Her Majesty's dominions attainted or convicted of treason or felony.[8]

Persons holding contracts for the public service are also incapable of being elected or sitting or

[1] Ss. 42, 44, 45. [2] Ss. 48, 52. [3] Ss. 6, 28.
[4] S. 11. [5] S. 14. [6] S. 16.
[7] S. 18. [8] S. 23.

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retaining their seats.[1] A member of either House vacates his seat if he

(1) ceases to be qualified or becomes disqualified;

(2) becomes of unsound mind;

(3) swears or declares or acknowledges allegiance, obedience, or adherence to any foreign prince or power, or does, concurs, or adopts any act whereby he may become a subject or citizen of any foreign state or power, or entitled to the rights, privileges, or immunities of such;

(4) is absent from his seat for two consecutive months of any session without permission of the House; or

(5) accepts any pension or office of profit from the Crown other than in the army or navy; but members accepting political office may be re-elected or re-nominated.[2]

The privileges, immunities, and powers of the two Houses and their members may be defined by the Legislature; but may not exceed those for the time being of the Commons House of Parliament or its members.[3] To be an elector of the Assembly a man must be

(1) of full age and not subject to any legal incapacity;

[1] Ss. 24, 25. See *Miles* v. *McIlwraith*, L. R. 8, App. 120; *ante*, p. 117, on a similar provision in the Queensland Constitution Act.

[2] S. 29.

[3] S. 36.

(2) a natural born or naturalised subject of Her Majesty, or a denizen of Western Australia;

(3) possessed for at least one year before registration and within the electoral district for which he seeks registration of

(*a*) a freehold estate in possession at law or in equity of the clear net value of £100; or

(*b*) a leasehold estate in possession of the clear value of £10 per annum; or

(*c*) a lease or licence from the Crown at £10 per annum at least to depasture, occupy, cultivate, or mine Crown lands;

(4) in occupation for at least one year before registration, and within the electoral district for which he seeks registration,

(*a*) as householder, of a dwelling-house of the clear value of £10 per annum; or

(*b*) as lodger, of a room or rooms or lodgings of the clear annual value unfurnished of £10.[1]

To be an elector of the Council a man must have the same qualification as for the Assembly, except that the clear net value of his freehold must be £200, or of his leasehold £30, or of his

[1] S. 39.

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lease or licence from the Crown £30, and his qualifying dwelling-house must be of the net clear value of £30 per annum: while there is no lodger franchise.[1] No man can vote at any election of either House who has been attainted or convicted of treason, felony, or any infamous offence in any part of Her Majesty's dominions, unless he has served his sentence, or received a free pardon or a pardon conditional on not leaving the colony.[2] All money bills must originate in the Assembly.[3] No Bill effecting any change in the Legislature can be presented to the Governor for the Queen's assent unless the second and third readings have been passed by an absolute majority of the whole number of the members for the time being of each House respectively.[4]

**New Zealand.**

A constitutional form of government was conferred upon this colony by 15 & 16 Vict. c. 72.[5] That Act established a General Assembly, consisting of the Governor, a Legislative Council whose members are appointed by the Governor for life,[6] and an elective House of Representatives,[7] now consisting of 74 members, including four Maori members elected by the natives. The members of the two Houses may resign their seats by writing addressed

[1] S. 53. [2] S. 39. [3] S. 66. [4] S. 73.
[5] Amended by 20 & 21 Vict. c. 53; 25 & 26 Vict. c. 48; 31 & 32 Vict. c. 57.
[6] Ss. 32–34; 31 & 32 Vict. c. 57. [7] Ss. 40–43.

to the Governor or Speaker respectively,[1] and vacate their seats by absence,—the Councillors for two successive sessions,—the Representatives for one session, without permission, or by becoming subjects or citizens of any foreign state or power, or bankrupt or insolvent, or being attainted of treason or convicted of felony or any infamous crime.[2] Money bills must originate in the House of Representatives.[3]

**South Africa.**

By the South Africa Act, 1877 (40 & 41 Vict. c. 47), power is given to the Queen to declare by Order in Council any two or more colonies or states of South Africa, whose respective legislatures agree, to be joined or confederated together in union under one general government and legislature, with such name and designation as to Her Majesty may seem fit,[4] the Union to be divided into such provinces, with such names and boundaries, as the Queen may direct.[5]

The **Executive Power** is vested in the Queen, to be exercised in her behalf by a Governor-General or officer appointed to administer the government by authority of Her Majesty's Royal Letters Patent,[6] with a Privy Council of members from time to time chosen and summoned by the Governor-General and removable by him.[7] The command-in-chief of the land and naval militia and of all naval and

[1] Ss. 35, 49. [2] Ss. 36, 50. [3] S. 54.
[4] S. 3. [5] S. 5. [6] S. 6. [7] S. 9.

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military forces of and in the Union is vested in the Queen.[1]

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The **Legislative Power** is vested in a Union Parliament consisting of the Queen, a Legislative Council and a House of Assembly,[2] with privileges, immunities and powers the same as those of the House of Commons of the United Kingdom until defined by Act of the Union Parliament, but never to exceed those of the said House of Commons.[3]

The *Legislative Council* is to consist of such number of members, representing such divisions of the Union, and is to be so constituted, as the Queen may direct.[4]

The *House of Assembly* is to be elective, the division of electoral districts, apportionment and qualification of members, and conduct of elections to be as the Queen may direct, until the Union Parliament otherwise provides. But provision is to be made, both in the Union Parliament and in the Provincial Councils, for the due representation of the natives so as shall be deemed by Her Majesty without danger to the stability of the government.[5]

A decennial census of the Union is to be taken, on which the representation of the provinces may be readjusted;[6] and the number of members of the House of Assembly may be increased from time to time by the Union Parliament, main-

[1] S. 13. [2] S. 15. [3] S. 16.
[4] S. 18. [5] S. 19. [6] S. 21.

taining the proportionate representation of the provinces.[1]

Money votes must originate in the House of Assembly,[2] and be recommended thereto by the Governor-General.[3] Bills passed by the Union Parliament are to be either assented to in the Queen's name by the Governor-General or refused assent, or reserved for the signification of the Queen's pleasure, or assented to subject to amendments specified by the Governor-General.[4] A Bill assented to may be disallowed by the Queen in Council within two years of the receipt of an authentic copy thereof from the Governor-General by one of Her Majesty's Secretaries of State, such disallowance being signified by the Governor-General by speech or message to each House of the Union Parliament, or by proclamation.[5]

A Bill reserved for the signification of the Queen's pleasure is of no force unless, within two years of the day when it was presented to the Governor-General for assent, the Governor-General signifies by speech or message to each House of the Union Parliament or by proclamation that it has received the assent of the Queen in Council.[6]

**Each Province** is to be presided over by a Chief Executive Officer, entitled, appointed, and removable as the Queen may direct.[7] It is to

[1] S. 22. [2] S. 23. [3] S. 24. [4] S. 25.
[5] S. 26. [6] S. 27. [7] S. 28.

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have a Council or Parliament consisting of the Chief Executive Officer and a House or two Houses of Legislature, and such number of councillors, or councillors and members of Assembly, elected in such manner and for such term as the Queen may direct.[1]

The *Union Parliament* is to legislate in relation to all matters not coming within the classes of subjects by the Act assigned to the councils of the provinces, and more particularly as to the following;[2] viz.,—

1. The qualification of electors and members of the Legislative Council and House of Assembly, and other questions relating to the constitution, privileges, and proceedings of either of the said bodies, but always subject to the provisions of the Act relating to the representation of natives.
2. The public debt and property.
3. The regulation of trade and commerce.
4. The raising of money by any mode or system of taxation.
5. The borrowing of money on the public credit of the Union.
6. Postal service and telegraphs.
7. The census and statistics.
8. Militia, military and naval service, and defence, saving all matters and things

[1] S. 32. [2] S. 33.

relating to the troops, ships, property, and prerogatives of the Crown not heretofore placed under the jurisdiction of the colonial governments.

9. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of the Union.
10. Beacons, buoys, lighthouses.
11. Navigation and shipping.
12. Quarantine and the establishment and maintenance of marine hospitals.
13. Fisheries.
14. Bridges or ferries between a province and a foreign state, or between two provinces.
15. Currency and coinage.
16. Banking, incorporation of banks, and the issue of paper money.
17. Savings banks.
18. Weights and measures.
19. Bills of exchange and promissory notes.
20. Interest.
21. Legal tender.
22. Bankruptcy and insolvency.
23. Patents of invention and discovery.
24. Copyrights.
25. Affairs of native tribes or people who are not included under the laws applicable to the general community.
26. Naturalisation and aliens.
27. Marriage and divorce.

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28. The criminal law.
29. The establishment, maintenance, and management of gaols, hospitals, asylums, and other public institutions for the use of the Union generally.
30. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by the Act assigned exclusively to the councils of the provinces.
31. Such other subjects herein assigned to the councils of the provinces as the council of any province may by law declare to be within the competency of the Union Parliament in respect of such province.[1]

*In each province the Council* is to have exclusive legislative powers over the following classes of subjects not before assigned to the Union Parliament ;[2] viz.,—

1. The qualification of electors and members of the Provincial Council, but always subject to the provisions of the Act relating to the representation of natives.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial

[1] S. 33. [2] S. 34.

offices and the appointment and payment of provincial officers.

5. The management and sale of the public lands belonging to the province and of the timber and wood thereon.
6. Education.
7. The establishment, maintenance, and management of public and reformatory prisons in and for the province.
8. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province other than marine hospitals.
9. Municipal institutions in the province.
10. Licences for trading and other purposes in order to the raising of a revenue for provincial, local, or municipal purposes.
11. Local works and undertakings other than such as are of the following classes:
    (*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;
    (*b*) Lines of steamships between the province and any British or foreign country.
    (*c*) Such works as, although wholly

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situate within the province, are before or after their execution declared by the Union Parliament to be for the general advantage of the Union or for the advantage of two or more of the provinces.

12. The incorporation of companies with provincial objects.
13. The solemnisation of marriage in the province.
14. Property and civil rights in the province.
15. The administration of justice in the province, including the constitution, maintenance, and organisation of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.
16. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
17. The registration of titles to land.
18. Generally all matters of a merely local or private nature in the province.[1]

The Union Parliament and two provincial

[1] S. 34.

councils are to have *concurrent powers* of legislation as to immigration.[1]

The foregoing distribution of legislative powers between the Union Parliament and the provincial councils may be varied by Order in Council issued in pursuance of s. 3 of the Act; and nothing in the Act is to affect or limit the legislative powers of the Imperial Parliament relating to the Union.[2]

Laws made by provincial councils are to be transmitted to the Governor-General, who is to proceed with regard to them in the same way as in respect to Bills of the Union Parliament.[3]

Provisions are also made for the creation of a consolidated revenue fund,[4] expenses of collection, &c.,[5] interest of provincial public debts,[6] salary of Governor-General,[7] appropriation of revenue,[8] liability of Union for provincial debts,[9] assumption by Union of property for public defence,[10] admission duty free into all the provinces of articles grown, produced, or manufactured in any province,[11] and for a provincial consolidated revenue fund.[12]

Except as provided by the Act or by Order in Council issued under s. 3, all laws in force in the colonies and states respectively at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial,

[1] S. 35. [2] S. 37. [3] S. 38. [4] S. 39.
[5] S. 40. [6] S. 41. [7] S. 42. [8] S. 43.
[9] S. 44. [10] S. 45. [11] S. 47. [12] S. 48.

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existing therein at the Union, shall continue in the provinces situate within what at the Union are the boundaries of those colonies and states respectively, as if the Union had not been made, subject to repeal by the Union Parliament or provincial councils.[1]

The Union Parliament may provide for the constitution, maintenance, and organisation of a Supreme Court of Judicature and of a General Court of Appeal for the Union, and for the establishment of additional courts. But no Act of the Union Parliament is to affect the right of appeal to Her Majesty in Council.[2]

All laws passed by the Union Parliament or provincial councils relating to *natives or native officers*, or to *immigration*, and all laws passed by provincial councils relating to *tenure of land*, are to be reserved for the signification of Her Majesty's pleasure, unless urgency demands its immediate attention; but in such case the law is to be transmitted for Her Majesty's pleasure thereon at the earliest possible opportunity.[3]

No Act of the Union Parliament is to be deemed void or inoperative because repugnant to this Act or any Order in Council made thereunder; but any Act containing provisions differing from those of this Act is not to have any effect until Her Majesty's pleasure in that behalf has been duly signified.[4]

Her Majesty may, with the advice of her Privy

[1] S. 50. [2] S. 51. [3] S. 55. [4] S. 56.

Council, on addresses from the Union Parliament, and from the legislature of any colony, state, or province not included in the Union at the date of such addresses, admit such colony, state, or province into the Union; and on address from the Union Parliament may admit into the Union any territory not at the date of such address included in any colony, state, or province.[1]

The Queen may, with the advice of her Privy Council, authorise the annexation to the Cape of Good Hope of the whole or any portion or portions of any of her possessions in South Africa; but not until the Legislature of the Cape of Good Hope has passed a law providing that such territories shall form part of the colony.[2]

Any colony, state, or province admitted into the Union, not originally included therein, is to be entitled to proportionate representation in the Legislature.[3]

This Act has not yet been brought into operation.

### Cape of Good Hope.

Responsible government in this colony dates from 1872, in which year the colonial legislature (then of the representative type established under Letters Patent dated May 23, 1850) passed an Act providing for it, which was subsequently assented to by Her Majesty by an Order in Council dated August 9, 1872. The Legislature

[1] S. 57. [2] S. 58. [3] S. 59.

CHAP. III. consists of the Governor and a Legislative Council
Sect. 2. of 22, and a House of Assembly of 76 members,
Colonies with responsible government. both elected by the same voters with a property qualification.

*Section* 3.

Sect. 3. Privileges and powers of colonial Assemblies. The privileges and powers of colonial Legislative Assemblies have several times been discussed before the Judicial Committee of the Privy Council. In an action against the Speaker of the House of Assembly of Jamaica and certain magistrates and constables for trespass and false imprisonment[1] it was laid down that the power of punishing contempts is inherent in every Assembly possessing supreme legislative authority, whether such as tend indirectly to obstruct proceedings, or directly to bring authority into contempt.

That case, however, was overruled by *Kielley* v. *Carson*,[2] in which an action for assault and battery and false imprisonment was brought against the Speaker and certain other members and officers of the House of Assembly of Newfoundland. The judgment of the Judicial Committee was delivered in cautious terms by Mr. Baron Parke, who had also delivered that in *Beaumont* v. *Barret*. It declared that the House of Assembly of Newfoundland did not possess the power of arrest with a view to adjudication on a complaint of contempt committed out of its doors, no such privilege having

[1] *Beaumont* v. *Barret*, 1 Moo. P. C. C. 59.
[2] 4 Moo. P. C. C. 63.

been expressly conferred upon it by the Crown, and such an authority not being a necessary incident to the creation of a local legislature.

In the same judgment it was laid down that the power of committal enjoyed by the House of Commons in England was held, not because it was a representative body with legislative functions, but by virtue of ancient usage and prescription, the *lex et consuetudo Parliamenti*, which forms a part of the common law of the land.

The same question was discussed in *Fenton* v. *Hampton*.[1] There the Legislative Council of Van Diemen's Land had appointed a committee of themselves to inquire into alleged abuses of the convict department, with leave to send for persons in order to prosecute the inquiry. The respondent, who was a comptroller-general of convicts in the island, was summoned, but refused to appear, and eventually was adjudged guilty of contempt by the Council; and on their resolution the Speaker, one of the appellants, issued his warrant for the apprehension of the respondent, who was accordingly taken into custody. For this an action of trespass was brought in the Supreme Court of the colony, in which judgment was given for the respondent. On appeal the Judicial Committee said the principal point involved the constitutional rights and authority of the legislative bodies in various parts of Her Majesty's colonial territories; and decided that the case of *Kielley* v. *Carson*,[2] where their

[1] 11 Moo. P. C. C. 347.

[2] 4 Moo. P. C. C. 63.

lordships were of opinion that the House of Assembly did not possess the power of arrest with a view to adjudication on a complaint of contempt committed out of its doors, bound them. They also stated that there was no ground for the distinction attempted to be drawn between cases where the authority of legislative bodies was derived from the Crown, and the then present case where the authority was derived from a statute of the Imperial Parliament. The *lex et consuetudo Parliamenti* apply exclusively to the Lords and Commons of this country, and do not apply to the Supreme Legislature of a colony by the introduction of the common law there.[1]

A member of the legislative assembly of Dominica having been committed to prison for a contempt committed in the face of the assembly, it was argued that the previous cases of *Kielley* v. *Carson*[2] and *Fenton* v. *Hampton*[3] were distinguishable, having merely decided that the House of Assembly could not punish for a contempt committed out of the House. The Judicial Committee, however, on appeal decided that from the existence of the privileges of the House of Commons in England it could not be argued that like powers belonged to legislative assemblies of comparatively recent creation in the dependencies of the Crown; that there was no resemblance between a colonial

[1] The House of Keys, in the Isle of Man, has not, simply because it is invested with legislative functions, the power to commit for contempt: *In re Brown*, 33 L. J. Q. B. 193.

[2] 4 Moo. P. C. C. 63.

[3] 11 Moo. P. C. C. 347.

House of Assembly and a Court of justice being a Court of record, and no ground for saying the power to punish for contempt, inherent in the one, is by analogy inherent in the other; that the principle in the common law, *quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa esse non potest*, warranted no more than the right to remove for self-security, not to inflict punishment; and therefore that the House of Assembly did not possess authority to commit and punish for contempts committed and interruptions and obstructions given to its business by its members or others in its presence and during its sitting.[1] On a subsequent occasion the same high tribunal stated that the powers incident to or inherent in a colonial Legislative Assembly are such as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute, and do not extend to justify punitive action or unconditional suspension of a member during the pleasure of the Assembly.[2]

In another case[3] the power of the Legislative Assembly of Victoria to commit for contempt was argued upon a different footing. That Assembly was constituted under a Colonial Act passed in 1854, ratified and set forth in the 1st schedule to the Imperial Statute 18 & 19 Vict. c. 55,[4] by which

[1] *Doyle* v. *Falconer*, L. R. 1 P. C. 328.
[2] *Barton* v. *Taylor*, L. R. 11 App. 197.
[3] *Dill* v. *Murphy*, 1 Moo. P. C. C., N. S., 487.
[4] See *ante*, p. 113.

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statute a legislative Council and a legislative Assembly were to be constituted; and providing in s. 35 that the Legislature of Victoria should "define" the privileges, immunities, and powers to be held, enjoyed, and exercised by the Council and Assembly and by the members thereof respectively, provided that they should not exceed those then held, enjoyed, and exercised by the Commons House of Parliament or the members thereof.[1] By the Act 20 Vict. No. 1, passed in the first colonial Parliament held under the above statute, the legislative Council and Assembly and their committees and members were clothed with such and the like privileges, immunities, and powers as at the time of the passing of the Constitution Act were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland and by the committees and members thereof, so far as the same were not inconsistent with the Constitution Act. Printed copies of the Journals of the House of Commons were made *primâ facie* evidence of the privileges, immunities, and powers of the Council or Assembly, or any committee or members thereof. On the construction of this Act it was held that the privileges of the colonial Council and Assembly had been sufficiently defined by it; and that the legislative Assembly had power to commit the appellant for contempt in publishing a libel upon one of its members.

[1] There is a corresponding provision in the Canada Act, 38 & 39 Vict. c. 38, s. 1, in the Victoria (Colonial) Constitution Act, s. 35 (*ante*, p. 113), and in the Western Australia (Colonial) Constitution Act, s. 36 (*ante*, p. 120).

In *The Speaker of the Legislative Assembly of Victoria* v. *Glass*[1] the decision in *Dill* v. *Murphy* was extended. In that case the respondent had been committed to gaol for a contempt and breach of the privileges of the House by a general warrant of the appellant, which stated on its face that the legislative Assembly had resolved that the respondent was guilty of a contempt and breach of privilege of the legislative Assembly. The respondent obtained a writ of *habeas corpus* addressed to the keeper of the gaol; and on the argument upon the return, setting out two general warrants of the appellant, the Chief Justice and two other judges of the Supreme Court in Victoria had made an order for the discharge of the respondent, which the full Court had declined to rescind. On appeal the Judicial Committee came to the conclusion, following *Dill* v. *Murphy*, that, the Legislature of the colony having been permitted to carry over to the colony the privileges, immunities, and powers of the House of Commons, and having in terms carried over all the privileges and powers exercised by the House of Commons at the date of the statute, there was carried over to the legislative Assembly of the colony the privilege or power of the House of Commons connected with contempt, the privilege or power, namely, of committing for contempt, of judging itself of what is contempt, and of committing for contempt by warrant stating generally that a contempt had taken place.

[1] L. R. 3 P. C. 560.

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A standing Order of a Legislative Assembly, adopting, so far as is applicable to its proceedings, the rules, forms, and usages in force in the British House of Commons, and assented to by the Governor, must be construed to relate only to such rules, forms, and usages as were in existence at the date of the Order.[1]

The 26 & 27 Vict. c. 84 confirmed all laws theretofore passed or purporting to have been passed by any colonial legislature, with the object of declaring or altering the constitution of such Legislature or of any branch thereof, or the mode of appointing or electing the members of the same.[2]

An Act having been passed to indemnify the Governor of Jamaica and certain other persons for proceedings taken by them in suppressing a rebellion in the island, it was considered by the Queen's Bench that local Legislatures having been established in our colonies with plenary power of legislation, the same comity which obtains between nations should be extended to them by the tribunals of this country, when their law conflicts with ours in respect of acts done within their jurisdiction. And the Court decided that, as it could not be disputed that it was within the competence of the local Legislature to pass the law, it effectually deprived the plaintiff of the right he would otherwise have had of maintaining an action in this country.[3]

[1] *Barton* v. *Taylor*, L. R. 11 App. 197. [2] S. 2.
[3] *Phillips* v. *Eyre*, L. R. 4 Q. B. 225; ibid. 6 Q. B. 1.

Where a colonial statute provided that if any legislative councillor should for two successive sessions fail to give his attendance without permission, his seat should thereby become vacant; and a councillor absented himself during the whole of three sessions, having previously obtained permission for a year, which period of time in the event covered the whole of the first and part of the second session, it was held that his seat was vacated, as the permission did not cover two successive sessions.[1]

The 28 & 29 Vict. c. 63 was passed to remove doubts as to the validity of colonial laws. After defining a colonial Legislature and a colonial law as above quoted,[2] it provides[3] that an Act of Parliament or any provision thereof shall, in construing that Act, be said to extend to any colony, when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament.

By section 2 any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

[1] *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442.
[2] *Ante*, p. 66. [3] S. 1.

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By section 3 no colonial law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.[1] This repeals the vague limitation formerly supposed to exist, that laws made for a Crown colony must not be repugnant to the Common Law of England.[2]

By section 4 no colonial law, passed with the concurrence of or assented to by the Governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof, which may have been given to such Governor by or on behalf of Her Majesty by any instrument other than the letters patent or instrument authorising such Governor to concur in passing or to assent to laws of peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last mentioned instrument.

By section 5 every colonial Legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of

[1] *Bank of Australasia* v. *Nias*, 16 Q. B. 717. As to the authority of the Legislature of New South Wales to pass an Act alleged to be repugnant to the law of England or natural justice, *vide L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31, *post*, p. 145.

[2] See Sir F. Stephen's History of the Criminal Law of England, ii. 58.

judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative Legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers and procedure of such Legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

Upon section 5 of this Act a question arose in an appeal from Lower Canada[1] as to whether the Quebec Act, 33 Vict. c. 58, was repugnant to the provisions of the Imperial British North America Act, 1867. The provincial Act was passed to relieve a benevolent society incorporated in Montreal of pecuniary embarrassment arising from improvident regulations. The Imperial Act created a Dominion Parliament for Canada, and a Legislature for the province of Quebec; and by section 91 provided that the Dominion Parliament should have exclusive legislative authority over *inter alia* matters of bankruptcy and insolvency, which were not to be deemed matters of a local and private nature. By the next section were brought exclusively under the legislative authority of the provincial legislature *inter alia* the establishment,

[1] *L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31.

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maintenance, and management of eleemosynary institutions in and for the province, and generally all matters of a merely local or private nature in the province. The Judicial Committee decided that the provincial Act was not an Act relating to bankruptcy or insolvency, and therefore not illegal and unconstitutional as repugnant to the Imperial Act.

No law or ordinance made by any colonial Legisture for the admission of the evidence of barbarous and uncivilised persons in the colonial courts, or before the colonial magistrates, shall be null and void by reason of any repugnancy to the law of England.[1]

Colonial legislatures have no power to enact laws applying to all persons, natives of whatever country, committing certain acts in any part of the world. Their jurisdiction is confined within their own territories, and the maxim *extra territorium jus dicenti impune non paretur* applies to them.[2]

By s. 6 copies of colonial laws certified by the clerk or other proper officer of any colonial legislative body are to be evidence that such laws have been passed, and any proclamation purporting to be published by the Governor in any newspaper of the colony to which any colonial law relates, signifying Her Majesty's disallowance of such law, is to be *primâ facie* evidence of such disallowance. And similarly as to bills of colonial legislatures

[1] 6 & 7 Vict. c. 22, s. 1.

[2] *Macleod* v. *A.-G. for New South Wales*, L. R. (1891) A. C. 455.

reserved for Her Majesty's assent and assented to by Her Majesty.

Colonial Acts, proclamations, treaties, and other acts of State, may be proved by examined or duly authenticated copies.[1]

Colonial legislatures have power to make laws, statutes, or ordinances for imparting the privileges of naturalisation; but such privileges will only be enjoyed within the limits of the colony; and the law, statute, or ordinance will be subject to be confirmed or disallowed by Her Majesty in the same way as other colonial laws, statutes, or ordinances.[2]

Under this Act the following colonies have passed laws with respect to naturalisation, viz.:

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| Canada . . . | Act, 44 Vict. c. 13. |
| British Honduras . | Ordinance, No. 13 of 1883; amended by Ordinance No. 8 of 1885. |
| Bahamas . . | Act, 35 Vict. c. 20. This only provides for the making of regulations by the Governor for certain matters in connection with the British Naturalisation Acts, 1870. The Naturalisation Act of 1878, No. 11 Vict. c. 4, remains in force. |
| Grenada . . . | Act of 1872, No. CCCCXLI. |
| Leeward Islands . | Act, No. 11 of 1880. |
| Sierra Leone . . | Ordinance, No. 5 of 1873. |
| Cape of Good Hope | Act, No. 2 of 1883. |
| Natal . . . | Law of 1874, No. 23 of 1874. Only relates to persons of European parentage or descent. |
| Labuan . . . | Ordinance, 1871. |

[1] 14 & 15 Vict. c. 99, s. 7; *Clarke* v. *Emery*, 1 F. & F. 446. As to proof of Governors' proclamations under the Passengers Act, 1855, *vide* 18 & 19 Vict. c. 119, s. 97.

[2] 33 & 34 Vict. c. 14, s. 16.

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| Mauritius . . | Ordinance, No. 21 of 1872; amended by Ordinance, No. 15 of 1887, and by Ordinance, No. 33 of 1888. |
| New South Wales . | Act, 1875. |
| Western Australia . | Act, No. II. of 1871. |
| New Zealand . . | Act, 1880; amended by Act of 1882. |
| Fiji Islands . . | Ordinance, 1875. |

The following colonies have legislated with respect to naturalisation at dates previous to the Imperial Act above:

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| Trinidad . . . | Ordinance, No. 26 of 1868. |
| Bermuda . . | Act, No. 11 of 1857. |
| British Columbia . | Proclamation of Governor under Imperial Act, 21 & 22 Vict. c. 99, repealed by 29 & 30 Vict. c. 67, which saves instruments issued under its authority and rights or titles acquired by virtue thereof. Dated 14th May, 1859. |
| Newfoundland . | Act, 19 Vict. c. 20. |
| Queensland . . | Act, 1867. |
| South Australia . | Acts, No. 5 of 1864; 23 & 24 Vict. No. 20. |
| Tasmania . . | Act, 25 Vict. No. 2. |
| Victoria . . . | Act, 28 Vict. No. 256. |

Colonial laws made for the purpose of establishing the validity of marriages contracted in any colony are valid in all parts of Her Majesty's dominions, provided that the parties to the marriage were according to the law of England competent to contract the same at the time of the marriage.[1] In New South Wales, Victoria, South Australia, Queensland, Western Australia, New Zealand, Tasmania, Barbados, Mauritius, and by the Parliament of the Dominion of Canada, laws

[1] 28 & 29 Vict. c. 64.

have been passed making marriage with a deceased wife's sister valid in those colonies respectively; in South Australia the marriage of a man with the daughter of the sister of his deceased wife is also made valid.[1] But such colonial marriages seem to be of doubtful validity in the United Kingdom by reason of the proviso in the Act just quoted.

By the Colonial Copyright Act (also known as the Foreign Reprints Act)[2] it is provided that in case the legislature of any British possession shall pass an Act or make an Ordinance for securing or protecting the rights of British authors in such possession, and shall transmit it to be submitted to Her Majesty, it shall be lawful for Her Majesty, if she thinks fit, to issue an Order in Council declaring that so long as the provisions of such Act or Ordinance continue in force within such colony, the prohibitions contained in the Copyright Act, 1842,[3] against importing, selling, letting out to hire, exposing for sale or hire, or possessing, foreign reprints of books first composed, written, printed or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise directed by such Order in Council. The following colonies have placed themselves within the provisions of this Act, viz.:

[1] *Vide* Hammick's Marriage Law of England, App. xiii.
[2] 10 & 11 Vict. c. 95. [3] 5 & 6 Vict. c. 45.

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| Antigua | Copyright Ordinance, No. 601, June 25, 1850. |
| Bahamas | British Authors' Rights Act, No. 1208, June 5, 1849. |
| Barbados | Act, No. 936, Dec. 29, 1848. |
| Bermuda | Books Importation Act, No. 669, March 2, 1849. |
| British Guiana | Ordinance, No. 14 of 1851. |
| Canada | Copyright Act, No. 780, Dec. 24, 1850. |
| Cape of Good Hope | Act, No. 4 of 1854. |
| Grenada | Act, No. 477, Jan. 13. 1854. |
| Jamaica | Act, No. 3924, Jan. 13, 1854.<br>Act, No. 4170, July 3, 1857.<br>Act, 1858, c. 21. |
| Mauritius | No. 24 of 1851. |
| Natal | Ordinance, No. 14 of 1856. |
| Nevis | Act, No. 237, March 16, 1855. |
| New Brunswick | Ordinance, Sept. 8, 1848. |
| Newfoundland | Books Importation Act, No. 74, Aug. 7, 1849. |
| Nova Scotia | Ordinance, Sept. 8, 1848. |
| Prince Edward Island | Importation of Books Act, Nov. 3, 1848. |
| S. Christopher | Books Importation Act, Nov. 20, 1849. |
| S. Lucia | Copyright Ordinance, No. 8, Nov. 19, 1850. |
| S. Vincent | No. 602, Aug. 27, 1852.<br>No. 805, Nov. 4, 1864.<br>Ordinance, No. 34, 1878. |
| Trinidad | See Order in Council, March 17, 1875. |

By the International Copyright Act, 1886,[1] where before the passing of the Act an Act or Ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an Order modifying the Copyright Acts and International Copyright Act, so far as they apply to such British possession and to literary and artistic works first produced therein.[2]

By the Colonial Inland Post Office Act, 1849,[3] colonial legislatures are empowered to make laws

[1] 49 & 50 Vict. c. 33. [2] S. 8 (3).
[3] 12 & 13 Vict. c. 66.

for the establishment, maintenance, and regulation of postal communications within the respective colonies, and for charging postal rates and appropriating the revenue derived therefrom.

The legislature of any British colony may make laws for the admission before any court or magistrate of the evidence of barbarous and uncivilised people, destitute of the knowledge of God and of any religious belief.[1] The Act also validates any such laws that might have been made previously in any British colony.[2]

The legislature of a British possession may by any law

(*a*) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under the Act, and limit territorially or otherwise the extent of such jurisdiction; and

(*b*) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit.[3]

But no such colonial law shall confer any juris-

[1] 6 & 7 Vict. c. 22, s. 1. [2] Ibid.

[3] 53 & 54 Vict. c. 27 (Colonial Courts of Admiralty Act, 1890), s. 3. By s. 16 and the First Schedule this Act is not to come into force in New South Wales, Victoria, St. Helena, and British Honduras, until Her Majesty so directs by Order in Council, and until the day named in that behalf in such Order.

diction not by the Act conferred upon a colonial Court of Admiralty.[1] Laws made in pursuance of the Act, or affecting the jurisdiction of, or practice or procedure in, any court of such possession in respect of the jurisdiction conferred by the Act, or altering any such laws previously passed, shall, unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the possession in which it has been passed.[2]

The legislative authority in any British possession has the power to authorise courts and tribunals to make inquiries in the cases hereinafter mentioned into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, wherever the incompetency, misconduct, shipwreck, or casualty has occurred, with the same jurisdiction as such court or tribunal would have had if such incompetency, misconduct, shipwreck, or casualty had occurred within the ordinary jurisdiction of such court or tribunal, but subject to all provisions, restrictions, and conditions which would have been applicable if they had so occurred.[3] These cases are as follows:

[1] 53 & 54 Vict. c. 27, s. 3.
[2] Ibid. s. 4.
[3] 45 & 46 Vict. c. 76, ss. 3, 4.

1. When the incompetency or misconduct has occurred on board of a British ship on or near the coasts of the British possession, or on board of a British ship in the course of a voyage to a port within the British possession.
2. When the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the British possession.
3. When the shipwreck or casualty occurs to a British ship on or near the coasts of the British possession, or to a British ship in the course of a voyage to a port within the British possession.
4. When the shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession.
5. When the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board of such British ship is found in the British possession.
6. When some of the crew of a British ship which has been wrecked or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession.

But no such inquiry can be held when the shipwreck or other casualty, or charge of incompetency or misconduct, has once been the subject of such

inquiry and been reported on by any competent court or tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a naval court. And where any inquiry has been commenced in the United Kingdom no inquiry can be made in the same case under the Act in any British possession.[1]

Where the legislature of any British possession provides for the examination of, and grant of certificates of competency to, persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade report to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, and that the certificates are granted under such principles as show the like qualifications and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons and in the like manner, it shall be lawful for Her Majesty by Order in Council

(1) to declare that the said certificates shall be of the same force as if they had been granted under the said Acts;

(2) to declare that any or all of the provisions of the said Acts which relate to certificates of competency granted under

[1] 45 & 46 Vict. c. 76, s. 3.

those Acts shall apply to the certificates referred to in the said Order;

(3) to impose such conditions and make such regulations with respect to the said certificates, and to the use, issue, delivery, cancellation, and suspension thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such regulations and conditions.

Upon the publication in the *London Gazette* of any such Order in Council, its provisions shall take effect from a date to be mentioned in the Order as if contained in the Act. Her Majesty in Council may revoke any such Order she may have made.[1]

Orders in Council have been made under this provision and gazetted with regard to

Victoria,
New South Wales,
South Australia,
Tasmania,
Queensland,
New Zealand,
Dominion of Canada,
Newfoundland,
Malta,
Hong Kong, and
The Straits Settlements.[2]

By the Merchant Shipping Act, 1890, where the legislature of any British possession by enactment provides for fixing, marking, and certifying load-lines on ships there registered on the same principles as in the Act, and of equal effect for ascertaining and determining the maximum

[1] 32 & 33 Vict. c. 11 (Merchant Shipping, Colonial, Act, 1869), s. 8.

[2] *London Gazette*, August 23, 1889, p. 4589.

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load-lines to which such ships can be safely loaded in salt water, and for giving notice of the load-line to the persons interested, Her Majesty may by Order in Council declare that any load-line so fixed and marked, and any certificate so given, shall have the same effect as if fixed, marked, or given in pursuance of the Act.[1]

The legislature of any colony may provide by law for reducing any fine directed by the Army Act, 1881, to be recovered on summary conviction, to such amount as may appear to the legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of the Act to be equivalent to any sum of British currency mentioned in the Act.[2]

Colonial legislatures may enact that where any person, feloniously injured within the colony, shall die beyond the limits of the colony, the offence may be dealt with in the colony where the injury was inflicted.[3]

If by any law or ordinance, made before or after the passing of the Extradition Act by the legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her

[1] 53 Vict. c. 9, s. 3.
[2] 44 & 45 Vict. c. 58, s. 169.
[3] 23 & 24 Vict. c. 122.

Majesty may by the Order in Council applying the Act in the case of any foreign state, or by any subsequent Order, either

(*a*) suspend the operation within any such British possession of the Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there and no longer;

(*b*) or direct that such law or ordinance, or any part thereof, shall have effect in such British possession with or without modifications and alterations, as if it were a part of the Act.[1]

Orders in Council have been made under this provision incorporating the following colonial Acts and Ordinances with the Act, viz.:

Bahamas, Act, 1877.
Barbados, Act, 1878.
Bermuda, Act, 1877.
Cape of Good Hope, Act, 1877.
Ceylon, Ordinance, 1877.
Gibraltar, Ordinance, 1877.
Gold Coast, Ordinance, 1877.
Grenada, Ordinance, 1880.
West Griqualand, Ordinance, 1879.
British Honduras, Ordinance, 1877.
Hong Kong, Ordinance, 1875.
Jamaica, Act, 1877.
Leeward Islands, Act, 1877.
Malta, 1877.
Mauritius, Act, 1877.
Natal, Law, 1877.
Queensland, Act, 1877.
S. Lucia, Ordinance, 1877.
S. Vincent, Ordinance, 1880.
Sierra Leone, Ordinance, 1878.
South Australia, Act, 1877.
Straits Settlements, Ordinance, 1877.
Tasmania, Act, 1877.
Tobago, Ordinance, 1880.
Transvaal, Law, 1880.
Trinidad, Ordinance, 1877.
Victoria, Act, 1877.
Western Australia, Act, 1877.

Under the same section an Order in Council suspending the Imperial Act during the continuance of the Canada Extradition

[1] 33 & 34 Vict. c. 52 (Extradition Act), s. 18.

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Act, 1877, as amended in 1882, has been made.[1] An Order in Council was issued Nov. 17, 1888, suspending in Canada the Imperial Act during subsistence of Extradition of Fugitive Criminals (Canada) Act. 1886.[2] An Order in Council as to Extradition between British and French Guiana was published in 1886.[3] The Straits Settlements and Protected States Consolidated Extradition Order, amending Orders of June 26, 1879, Dec. 3, 1883, Nov. 29, 1884, was published 1889.[4]

The Colonial Prisoners Removal Acts, 1869[5] and 1884,[6] create a system of intercolonial transportation. Under the former any two colonies may agree for the removal of prisoners from one to the other for the purpose of their undergoing the whole or any part of their punishment, and for their return. The sanction of an Order of Her Majesty in Council must be obtained to the agreement either on an address of the legislative body of the colony, or, where there is no legislative body, of the Governor.[7] By the Act of 1884[6] any of Her Majesty's principal Secretaries of State, acting with the concurrence of the government of every British possession concerned, may order a prisoner in any British possession to be removed to any other British possession or to the United Kingdom to undergo his sentence or the residue thereof, where it appears to him

(*a*) that the prisoner's life may be endangered or his health permanently injured by

[1] See Hertslet's Commercial Treaties.
[2] See *London Gazette*, 1888, p. 6411.
[3] See *London Gazette*, 1886, p. 4724.
[4] See *London Gazette*, August 27, 1889, p. 4673.
[5] 32 Vict. c. 10.
[6] 47 & 48 Vict. c. 31. [7] 32 Vict. c. 10, s. 4.

further imprisonment in the first-mentioned British possession; or

(*b*) that the prisoner belonged at the time of committing the offence to the Royal Navy or Her Majesty's regular military forces; or

(*c*) that the offence was committed wholly or partly beyond the limits of the first-mentioned British possession; or

(*d*) that by reason of there being no prison in the first-mentioned British possession in which the prisoner can properly undergo his sentence or otherwise, the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or

(*e*) that the prisoner belongs to a class of persons who under the law of the British possession are subject to removal under the Act.[1]

The legislature of any British possession may pass any law

(*a*) for determining the authority by whom and the manner in which any jurisdiction, power, or concurrence under the Act is to be exercised or given; or

(*b*) for the payment of any costs incurred in the removal, maintenance, return, or sending back after discharge of a prisoner or criminal lunatic; or

[1] 47 & 48 Vict. c. 31, ss. 2, 5, 18.

(*c*) for dealing in such possession with prisoners or criminal lunatics removed thereto in pursuance of the Act; or

(*d*) for making any class of prisoners subject to removal under the Act; or

(*e*) otherwise in any manner for the carrying of the Act or any part thereof into effect as regards the said possession.

Thereupon Her Majesty in Council may direct that such law or any part thereof shall, with or without modification or alteration, be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of the Act.[1]

Where there are local legislatures, as well as a central legislature, the legislature above referred to means the central legislature only.[2]

An Order in Council dated December 13, 1889, has been issued making regulations as to the removal and return of prisoners and criminal lunatics under this Act. An Order dated October 17, 1884, applies the Act to Cyprus and invests the High Commissioner or acting High Commissioner with all the powers vested by the Act in the Governor of a British possession.

Acts of colonial legislatures where the English law prevails must be governed by the same rules of construction as prevail in England; and English authorities upon Acts in *pari materia*

[1] 47 & 48 Vict. c. 31, s. 12. [2] Ibid. s. 18.

are authorities for the interpretation of colonial Acts.[1]

For an instance of the combined effect of Imperial and Colonial Legislation see *Reg.* v. *Mount.*[2] In consequence of this case was passed the Act regulating sentences imposed by colonial courts where jurisdiction to try is conferred by Imperial Acts.[3]

[1] *Per* Dr. Lushington in *Catterall* v. *Sweetman*, 1 Robert. p. 318.
[2] L. R. 6 P. C. 283. [3] 37 & 38 Vict. c. 27; see *post*, p. 172.

## CHAPTER IV.

### THE JUDICIARY AND THE BAR.



IT has already been mentioned[1] that under the statute 22 Geo. III. c. 75, s. 2, the Governor and Council of a colony are empowered to amove persons from judicial office in the colony for absence without reasonable cause, or neglect, or misbehaviour. The following memorandum with reference to the removal of colonial Judges was drawn up by order of the Lord President, in pursuance of a request from the Earl Granville, the Secretary of State for the Colonial Department, and submitted to and confirmed by the Lords of the Council in 1870.[2]

"It is obvious that some effectual means ought to exist for the removal of colonial Judges charged with grave misconduct; and these means ought to be less cumbrous than those existing for the removal of one of Her Majesty's Judges in England. The mode of procedure ought to protect Judges against the party and personal feelings which sometimes sway colonial Legislatures, and to ensure to

[1] *Ante*, p. 64.
[2] 6 Moo. P. C. C., N. S., Appendix ix.

the accused party a full and fair hearing before an impartial and elevated tribunal.

"Hence it was considered in the case of Mr. Justice Boothby that although the Legislature of South Australia had passed addresses to the Crown for his removal, that measure did not suffice, as it would have done in England; and that although the Legislature might act as his accuser, it rested with the advisers of the Crown in England to dispose of the charges against him.

"All forms of suspension or removal which are in use lead by different roads to the same result, viz., a hearing before the Privy Council.

"When a positive 'amotion' has been made by a Governor under Burke's Act (22 Geo. III. c. 75), the appeal to the Queen in Council is *strictissimi juris*, being provided by the statute itself.

"When an order of suspension from office has been made, the matter has commonly been referred by the Queen to the Judicial Committee, on the recommendation of the Secretary of State, though not invariably so, as in some cases the Secretary of State has himself advised the Crown to confirm or to disallow the suspension.

"The reference may be made to the Judicial Committee, or to a Committee of Council generally; but if it be made to the Judicial Committee, it is desirable that the Lord President and the Secretary of State for the Colonies should sit with the Judges on the hearing. This course has been pursued with advantage in several instances.

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"When charges are brought by a colonial Assembly against a Judge in the shape of a petition to the Queen in Council for his removal, as in the cases of Chief Justice Boulton, from Newfoundland, Mr. Justice Sanderson, from Grenada,[1] and Chief Justice Beaumont, from British Guiana, the Privy Council exercises a species of original jurisdiction on these petitions, which shall be considered presently.

"It may be remarked, generally, that it is extremely difficult, and might be highly injurious to the public service, to lay down an inflexible rule as to the mode of procedure to be adopted in all cases of this nature. When a Judge is charged with gross personal immorality or misconduct, with corruption, or even with irregularity in pecuniary transactions, on evidence sufficient to satisfy the Executive Government of the colony of his guilt, it would be extremely improper that he should continue in the exercise of judicial functions during the whole time required for a reference to England, or a protracted investigation before the Privy Council. Immediate suspension is in such cases a necessity, if much greater evils are to be avoided. But it must be borne in mind that a Governor who resorts to such a measure takes it at his own peril, and is bound to make out a complete case in justification of it. When such cases come to be investigated at home both the Governor and the Judge are on their trial; and to have taken unwarrantable proceedings against a Judge would doubtless be

[1] See *post*, p. 169.

regarded as a most serious offence on the part of an Executive Officer.

"On the other hand, when the charges against a Judge consist, not in any act of personal misconduct, but in a cumulative case of judicial perversity tending to lower the dignity of his office and perhaps to set the community in a flame, it is more difficult for the local Executive to act on its own responsibility. It is in cases of this description that petitions for the removal of Judges have been addressed to the Queen in Council by colonial Legislatures.

"This last mentioned mode of proceeding has been found by the Lords of the Judicial Committee to be more dilatory, more expensive, more onerous to the parties, and less satisfactory to their Lordships, than the mode by way of previous suspension or amotion. And that for the following reasons:—The Privy Council, accustomed to act as a Court of Appeal, that is, to review the evidence and decision of inferior tribunals, has by its constitution considerable difficulty in exercising an original jurisdiction, especially when the evidence has to be transmitted from the colonies. No regular system of pleadings and procedure can be said to exist in such cases. The consequence is that, the charges being often loose, vague, and multifarious, their Lordships have not found it easy to reduce them to distinct and positive issues of fact or law, such as are necessary to the maintenance of a quasi-criminal proceeding.

"As in ecclesiastical suits for the correction or

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removal of clerks, to which these proceedings offer some analogy, it is essential that the acts complained of should be clearly expressed, and that the accused person should have full notice of all that is to be proved against him.

"When the issues are settled comes the difficulty of the evidence. Both sides produce affidavits and other written evidence from the colony. When a batch of affidavits has been filed on one side, application is made by the other side for time to answer them. Great delay and expense ensue; and, as in the case of Mr. Beaumont, this kind of irregularity may protract the hearing of the case for two or three years, during which time the Judge, whom the colony is seeking to remove, retains his office. When the case is completed by the parties or their agents and brought in for argument, it is often loaded with a mass of irrelevant matter. Over these proceedings, regulated as they are by the advice of counsel on either side, their Lordships can exercise but little control in the preliminary stages of the case, being themselves unacquainted with the merits of it.

"The mode of amotion with the right of appeal, or of temporary suspension with a reference to England, is not open to these objections. The evil of an inefficient or discredited judicial officer is at once removed. The Governor, who feels called upon to take so decided a step, is bound to give the accused person full notice of all the charges brought against him, to call upon him for his answer, and to

hear it. This, therefore, affords a solid groundwork for his subsequent proceedings.

"Furthermore, the Governor, knowing that his decision will be reviewed in England on appeal, is bound, for his own justification, to send home the proceedings and evidence on which that decision rests in a clear and intelligible shape; and provision is made for the performance of this duty, Nos. 83, 84, 85, and 86 of the colonial Regulations.

"If the matter is then referred by Her Majesty in Council to the Judicial Committee, their Lordships are at once in a position to deal with it. The delay and expense incidental to getting up a case at a distance from the original scene in dispute vanish. The case is, or ought to be, already complete. And if it be at once submitted to the judgment of their Lordships in a complete form, there is no reason that it should not be heard and disposed of in a very short time, and at a small expense. Mr. Cloete's case (8 Moo. P. C. C. 484) is a very fair sample of a proceeding judiciously conducted in this manner. That gentleman had been improperly removed from a judicial office on the 19th April, 1853; he was restored to it by their Lordships on the 20th February, 1854; and as he had undoubtedly suffered an injustice, their Lordships expressed their desire that he should be indemnified for the expense he had been unjustly put to; and he was, in fact, soon afterwards promoted to a higher judicial office.

"It is scarcely necessary to add that in colonies

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having legislative Assemblies those Assemblies cannot be deprived of their undoubted constitutional right to address the Crown for the removal of a Judge; and the exercise of this right is altogether independent of the course which the Governor of the colony may think fit to adopt. When the charges against a judicial officer originate with Assemblies, the form of address or petition is perhaps the most correct, though not the most convenient, form of proceeding. When the action for removal originates with the Governor, he has the power to give effect to it in his own hands, subject to the control of the Home authorities.

"The experience of the Lords of the Council, therefore, strongly corroborates the arguments stated in a paper presented to the Colonial Office by Sir F. Roger in favour of proceedings by the Governor, subject to a review by the Secretary of State or the Privy Council in England; and they have invariably found that in cases in which proceedings have originated with the local Assemblies, the delay, uncertainty, and expense have been greatly augmented. At the same time, when the misconduct charged is purely judicial, and therefore not properly amenable to the decision of the Executive authority, acting on the advice of Law Officers or advisers of inferior rank, it would seem that the due maintenance of the independence of judges requires that judicial acts should only be brought into question before some tribunal of weight and wisdom enough to pronounce definitively upon them; and this function

appertains with peculiar fitness to the Privy Council, which, as a Court of Appeal, has to review the decision of the Colonial Courts."

A memorial having been presented to the Queen by one branch of a colonial Legislature complaining of the conduct in his office of a Chief Justice of the colony, and praying the Crown to adopt such measures of relief to the inhabitants of the colony as should seem expedient and justifiable, and setting forth eleven particulars of charges against the Chief Justice; the Judicial Committee, to whom the memorial and a counter one of the Chief Justice were referred, reported that in the course of fourteen years of office several instances of intemperate and in some cases illegal conduct had been established against the Chief Justice; but having regard to the length of time elapsed since all the acts except one were committed, and that the last of the acts (three years before), though erroneous and improper, was committed in the execution of what the Chief Justice thought his duty, they did not think, sitting judicially, they could say he ought to be removed for misconduct.[1]

The Judicial Committee have refused to issue an order in the nature of a *mandamus* to the judges of a colonial Court to enter up judgment after verdict obtained by the plaintiff in an action of assault, though such judgment ought to have been entered up as of course. They merely recommended the

[1] *Representatives of the Island of Grenada* v. *Sanderson*, 6 Moo. P. C. C. 38.

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Where the Judge of a Vice-Admiralty Court decreed the sale of a ship after being served with an inhibition from the Judicial Committee, their Lordships refused to attach him, because it was not proved to their satisfaction not only that there was error, but wilful error, and that it proceeded from corrupt or improper motive.[2]

The Vice-Admiralty Courts in the colonies exercise the same jurisdiction as the High Court of Admiralty, with one exception; that is, when particular powers are conferred upon the High Court by name, and not upon the Vice-Admiralty Courts.[3]

On a petition from Grenada it was decided by the Privy Council that the Chief Justice of that island had no power, alone and without the consent of the Assistant Justices, to issue rules prohibiting the Assistant Justices from doing any act in Chambers except in the case of absence from the island, illness, or personal interest in the act, of the Chief Justice.[4]

Certain persons having exercised the office of Judges of the Royal Court of S. Lucia under commissions issued irregularly by the Governor, they were held liable in an action for trespass and

[1] *In re Muir*, 3 Moo. P. C. C. 150; cp. *In re Assignees of Manning*, 3 Moo. P. C. C. 154.

[2] *Barton* v. *Field*, 4 Moo. P. C. C. 273. And see *Cloete* v. *The Queen*, 8 Moo. P. C. C. 484.

[3] *The Rajah of Cochin*, Swa. p. 475. *Cf. Lapraik* v. *Burrows*, 13 Moo. P. C. C. 132.

[4] *In re Wells*, 3 Moo. P. C. C. 216

false imprisonment for acts done by them in their assumed judicial capacity.[1]

A domiciled Englishman, on being appointed Chief Justice of Ceylon, removed to that colony with his family and resided there about three years. On his death in the colony probate of his will was taken out in the District Court of Colombo in the island and in the Court of Probate in England. Payment of legacy duty on his personal estate was refused on the ground that he was at the time of his death domiciled in Ceylon. But it was held by the Court of Exchequer at Westminster that his domicile remained English, and that the duty must be paid.[2]

The pension of a retired judge of a Crown colony, granted by the Secretary of State for the Colonies and voted annually by the legislature of the colony, is, in case of the bankruptcy of the judge, "property" which vests in the trustee of the bankruptcy; but it is "income" of the bankrupt within s. 90 of the Bankruptcy Act, 1869, and is subject to the power thereby given to the Court to determine how much of it shall be set aside for the benefit of the bankrupt's creditors.[3]

Every person exercising the office of a magistrate

[1] *Gahan* v. *Lafitte*, 3 Moo. P. C. C. 382. As to the liability of judges for their acts, see *Kemp* v. *Neville*, 10 C. B., N. S., 523, and notes thereto in Broom's Constitutional Law. As to appointment of judges in New Zealand, see *Buckley* v. *Edwards*, L. R. (1892) A. C. 387.

[2] *Attorney-General* v. *Rowe*, 1 H. & C. 31; 31 L. J. Ex. 314, and cp. *In re Tootal's Trusts*, L. R. 23 Ch. D. 532.

[3] *Ex parte Huggins*, L. R. 21 Ch. D. 85.

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in a colony has the authority of a Justice of the Peace in England for the purpose of the attestation of soldiers.[1]

Colonial Courts have jurisdiction to deal with charges of treason, piracy, felony, robbery, murder, conspiracy, or any other offence, committed on the sea or in any place within Admiralty jurisdiction, whether the accused is within the colony or is brought for trial to the colony, in the same way as provided by the laws of the respective colonies in the case of such offences committed, and persons charged with committing them, on waters within the limits of the respective colonies and of the local jurisdictions of the criminal courts thereof.[2] But only such penalties can be awarded as if the offence had been committed within the limits of the particular colony and the local jurisdiction, or as most nearly corresponds to the penalty due in England for such offence.[3] And if any person die in any colony of injuries feloniously caused upon the sea, or as above, every offence in respect of any such case, whether murder, manslaughter, or being accessory to murder or manslaughter, may be dealt with and punished within the colony as if it had been wholly committed within the colony; and if any person within any colony be charged with any such offence respecting the death on the sea, or as above, of any person feloniously injured,

[1] 44 & 45 Vict. c. 58, s. 94, sub-s. 1.

[2] 12 & 13 Vict. c. 96, s. 1.

[3] 37 & 38 Vict. c. 27, s. 3. This Act was passed in consequence of *Reg.* v. *Mount*, L. R. 6 P. C. 283.

such offence is to be held to have been wholly committed upon the sea.[1]

Her Majesty by commission under the Great Seal may empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts,[2] but only with jurisdiction with respect to prize, Her Majesty's navy, the slave trade, the Foreign Enlistment Act, the Pacific Islanders Protection Acts, 1872 and 1875, or to questions relating to treaties or conventions with foreign countries or to international law.[3] Any such Court may be abolished by the Admiralty on the direction of Her Majesty by commission under the Great Seal, and thereupon the jurisdiction of any colonial Court of Admiralty in such possession which was previously suspended shall be revived.[4]

Any court or tribunal in a British possession authorised by the legislative authority thereof to inquire into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other shipping casualties, is invested with jurisdiction to inquire into similar charges in the following cases occurring outside the limits of the British possession, viz.:

1. When the incompetency or misconduct has occurred on board a British ship on or near the coasts of the British posses-

[1] 12 & 13 Vict. c. 96, s. 3.

[2] 53 & 54 Vict. c. 27 (Colonial Courts of Admiralty Act, 1890), s. 9 (1). [3] S. 9 (2*a*). [4] S. 9 (4).

sion, or on board of a British ship in the course of a voyage to a port within the British possession;

2. When the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the British possession;
3. When the shipwreck or casualty occurs to a British ship on or near the coasts of the British possession, or to a British ship in the course of a voyage to a port within the British possession;
4. When the shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession;
5. When the master, mate, or engineer of a British ship, who is charged with incompetency or misconduct on board of such British ship, is found in the British possession;
6. When some of the crew of a British ship which has been wrecked or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession.

But no such inquiry may be held where the matter has once been reported on by a competent court or tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a Naval court. And where an

inquiry has been commenced in the United Kingdom no such inquiry as above can be made in any British possession.[1] Upon or after any such inquiry in a British possession, the powers of suspending or cancelling the certificate of any master, mate, or engineer of a ship conferred by the Merchant Shipping Acts, 1854 to 1880, may be exercised in the manner provided by s. 23 of the Act of 1862, and the Board of Trade is in all such cases vested with the powers thereby conferred upon them.[2] Rehearings may be ordered, and appeals lie to the Probate, Divorce and Admiralty Division of Her Majesty's High Court of Justice in England.[3]

Vice-Admiralty Courts are not Courts of record.[4]

Any Court within Her Majesty's dominions may, if in its opinion it is necessary or expedient, for the proper disposal of any action depending before it, to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which that law is different, direct a case to be prepared setting forth the facts as duly ascertained or agreed upon by the parties, and settle the questions of law arising out of the same on which the opinion of another Court is desired,

[1] 45 & 46 Vict. c. 76, s. 3 [2] Ibid. s. 5. [3] Ibid. s. 6.

[4] *Smith* v. *Nicolls*, 7 Sc. 147; 5 B. N. C. 208; *per* Tindal, C.J. As to differences in their practice and jurisdiction, *vide The Elizabeth*, 1 Hagg. 226; and as to the form of their proceedings, *vide The Norma*, 34 L. T., N. S., 418; *The Inca*, Swa. 370.

and remit the same to the Court (being a Superior Court) whose opinion is desired, and desire them to pronounce their opinion on the questions submitted to them. Any of the parties to the action may present a petition to the Court whose opinion is to be obtained, praying it to hear parties or their counsel and to pronounce their opinion, or to pronounce their opinion without hearing parties or counsel. Thereupon the Court may appoint an early day for the hearing, and thereafter pronounce their opinion, for which they may take such further procedure as shall seem proper to them.[1] A copy of the opinion certified by an officer of the Court is to be given to each of the parties to the action,[2] who may lodge it in the Court where the action is depending, and move that Court to apply the opinion; and that Court shall thereupon apply the opinion, or order it to be submitted to a jury with the other facts of the case as evidence, or conclusive evidence, of the foreign law therein stated.[3] If any appeal is brought in the action to Her Majesty in Council, or to the House of Lords, the opinion pronounced by any Court, whose judgments are reviewable by Her Majesty in Council or the House of Lords, may be reviewed and adopted or rejected by them.[4]

[1] 22 & 23 Vict. c. 63, s. 1. "Action" is declared in s. 5 of the Act to include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical.

[2] Ibid. s. 2. [3] Ibid. s. 3.

[4] Ibid. s. 4. See *Lord* v. *Colvin*, 1 Drew. & Sm. 24; 29 L. J. Ch. 297.

If, in any action in any Superior Court in Her Majesty's dominions, the court shall deem it advisable to ascertain the law applicable thereto of any foreign state or country with the government of which Her Majesty has entered into a convention for mutually ascertaining each other's law when pleaded in each other's courts, the court may direct a case to be prepared setting forth the facts, and may settle the questions of law arising thereout on which they desire to have the opinion of another court, and remit them with the case to the foreign court for their opinion, a copy whereof certified by an officer of such court shall be deemed a correct record thereof.[1] If, in any action in any foreign court whose government has entered into such a convention as above, the court deems it expedient to ascertain the law applicable of any part of Her Majesty's dominions, and remits to the court whose opinion is desired a case setting forth the facts and the questions of law on which the opinion is desired, any of the parties to the action may present a petition to the last-mentioned court to pronounce their opinion either with or without hearing parties or counsel; and the court shall pronounce its opinion accordingly, and a certified copy thereof shall be given to each of the parties.[2]

No convention within the scope of this Act has yet been made.

If in any proceeding, civil or criminal, in a court in the Queen's dominions, or held under the

[1] 24 & 25 Vict. c. 11, s. 1. [2] Ibid. s. 3.

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authority of Her Majesty, any question arises as to the existence or extent of any jurisdiction of Her Majesty in a foreign country, a Secretary of State shall, on the application of the court, send to the court within a reasonable time his decision on the question, and his decision shall for the purposes of the proceeding be final. The court is to send to the Secretary of State, in a document under the seal of the court or signed by a judge thereof, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned by the Secretary of State to the court, and those answers shall, on production thereof, be conclusive evidence of the matters therein contained.[1] Under the corresponding section of the repealed Act of 1843, a question was put in *Hervey* v. *Fitzpatrick*[2] to the Secretary of State for the Colonies in the following terms: "Whether Her Majesty has at any time exercised any jurisdiction with respect to the administration of personal estates of persons dying intestate in Cape Coast Town; and if so, to what extent and in what manner and through what court or officer such jurisdiction has been exercised."

Any supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who may be appointed for the purpose by Her Majesty in Council, may, where

[1] 53 & 54 Vict. c. 37 (Foreign Jurisdiction Act, 1890), s. 4.
[2] Kay, 421; 23 L. J. Ch. 564.

any competent tribunal in Her Majesty's dominions has issued a commission or other process for the examination in relation to any action or proceeding pending before it of any witnesses out of its jurisdiction, order the examination of such witnesses, if within the jurisdiction, before the person or persons appointed and in manner directed by the commission or other process; and may command the attendance of persons to be examined or the production of documents, and give all reasonable and just directions in such matters.[1] Such court or judge may, in the case of civil proceedings, nominate a fit person to take the examination, and any deposition or examination taken before an examiner so nominated is admissible in evidence to the same extent as if taken by or before such court or judge.[2] In the case of a *mandamus* or order in any criminal proceeding for the examination of any person being addressed to any such court or judge, such court or judge may nominate any judge of the court or of an inferior court, or any magistrate within the jurisdiction of such first-mentioned court, to take the examination; and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the *mandamus* or order was addressed.[3]

Any supreme Court in any of Her Majesty's

[1] 22 Vict. c. 20, ss. 1, 5.
[2] 48 & 49 Vict. c. 74, s. 2.
[3] Ibid. s. 3.

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colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who may be appointed for the purpose by Her Majesty in Council, may order the examination on oath of any witnesses within the jurisdiction, whose testimony any competent foreign tribunal, before which any civil or commercial matter is pending, is desirous of obtaining in relation to such matter; and may command their attendance for examination or the production of any document, and give all just and reasonable directions.[1] A certificate of the diplomatic agent, or of the consular agent at London, of any foreign power that any matter is a civil or commercial matter pending before a competent tribunal in the country he represents, and that such tribunal desires to obtain the testimony of the witnesses to whom the application relates, shall be evidence, but not the only evidence admissible, of those facts.[2] The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in the same way;[3] but not in the case of any criminal matter of a political character.[4] A foreign state includes its colonies, dependencies, and constituent parts.[5]

When the Extradition Act, 1870,[6] is applied by Order in Council to any British possession, a judge

[1] 19 & 20 Vict. c. 113, ss. 1, 6. [2] Ibid. s. 2.
[3] 33 & 34 Vict. c. 52, s. 24. [4] Ibid. [5] Ibid. s. 25.
[6] 33 & 34 Vict. c. 52.

of any court, exercising in the British possession the like powers as the Court of Queen's Bench exercises in England, may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.[1]

The Fugitive Offenders Act, 1881,[2] is an Extradition Act for the various parts of Her Majesty's dominions. It is divided into four parts:

Part I. relates to return of fugitives;
Part II. relates to intercolonial backing of warrants and offences;
Part III. relates to trial of offences, &c.
Part IV. relates to warrants and escape, evidence, exercise of jurisdiction, &c. &c.

In Part I. it is enacted (s. 2) that a person accused of committing any of the offences described below[3] in one part of Her Majesty's dominions may be apprehended in another part, and returned to the part whence he is a fugitive, by one of two procedures:

(A) By a warrant issued in one part of Her Majesty's dominions (s. 3) and endorsed
(1) in another part by a judge of a Superior Court there;

[1] 33 & 34 Vict. c. 52, s. 17, sub-s. 4.

[2] 44 & 45 Vict. c. 69.

[3] Treason, piracy, and every offence, by whatever name called, punishable where it was committed by a minimum term of twelve months' imprisonment with hard labour (s. 9).

(2) in the United Kingdom by a Secretary of State or one of the Bow Street Metropolitan magistrates;

(3) in a British possession by the Governor thereof.

(B) By a provisional warrant (s. 4) issued by a magistrate of any part of Her Majesty's dominions which the fugitive is suspected to be in or on his way to, on such information and under such circumstances as would justify the issue of a warrant if the offence charged had been committed within his jurisdiction; such warrant to be backed and executed accordingly. The magistrate is to send a report of the issue of the warrant and of the information, if in the United Kingdom, to a Secretary of State; if in a British possession, to the Governor; either of whom may, if he thinks fit, discharge the prisoner.

A fugitive when apprehended is to be brought before a magistrate (s. 5) and dealt with as if the offence charged were committed within his jurisdiction. If the endorsed warrant is duly authenticated, and evidence produced raising a strong or probable presumption that the fugitive committed the offence named in the warrant, being one of those above described, the magistrate shall commit the fugitive to prison and send a certificate of his

committal and a report of the case, if in the United Kingdom, to a Secretary of State; if in a British possession, to the Governor. A fugitive apprehended on a provisional warrant may be remanded for not exceeding seven days at a time for the production of an endorsed warrant.

On the expiration of fifteen days after his committal, or, if a writ of *habeas corpus* or other like process is issued by a Superior Court, after the decision of the court, a Secretary of State, if the fugitive is committed in the United Kingdom, or if in a British possession, the Governor thereof, may (s. 6) by warrant return him to that part of Her Majesty's dominions whence he is a fugitive, to be there dealt with in due course of law.

If a fugitive committed to prison as above in any part of Her Majesty's dominions is not removed within one month, a Superior Court may (s. 7), upon proof of notice in the United Kingdom to a Secretary of State, or in a British possession to the Governor thereof, order the fugitive to be discharged.

Where a fugitive is returned to any part of Her Majesty's dominions and not prosecuted within six months of his arrival for the particular offence, or is acquitted of it, then, in the United Kingdom a Secretary of State, or in a British possession the Governor thereof, may (s. 8) send him back free of cost and without delay to the place in or on his way to which he was apprehended. If, by reason of the trivial nature of the

case or of the application for the return not being made in good faith, in the interests of justice or otherwise it would, considering the distance and the facilities for communication and all the circumstances, be unjust or oppressive, or too severe a punishment, to return the fugitive either at all or till after a certain period, a Superior Court may (s. 10) discharge him absolutely or on bail, or order his return after a named period, or make any other order it thinks just.

In Part II. power is given to Her Majesty (s. 12) by Order in Council to form groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same, and to limit the application thereof as may be deemed expedient.

A warrant issued in one possession of a group may be endorsed (s. 13) by a magistrate in any other possession of the same group, and under it the person named therein may be arrested within the jurisdiction of the endorsing magistrate, and brought before him or some other magistrate in the same possession, either of whom may (s. 14) order him to be returned to the possession in which the warrant was issued. A judge, magistrate, or other authorised person in one possession of a group may (s. 15) issue a summons for the attendance of a witness either for prosecutor or defendant, which may be endorsed by a magistrate in any other possession of the group; and the witness, on service in the latter possession of the

endorsed summons and payment or tender of his expenses, shall obey it on pain of the appropriate punishment in either possession. By s. 16 a magistrate in a possession of a group may, before endorsement of a warrant as above provided, issue a provisional warrant as if for an offence committed within his jurisdiction, to be backed and executed accordingly ; but the person arrested is to be discharged unless the original warrant is produced and endorsed within a reasonable time. By s. 17, if a prisoner whose return is ordered is not started off within one month of the date of the order, a magistrate or Superior Court, on proof of notice to the holder of the order and the chief police officer, may order him to be discharged ; such order of discharge or refusal to make such order being subject to appeal. Where a returned prisoner is either not prosecuted within six months of his arrival or is acquitted, the Governor may (s. 18) send him back free of cost to the possession in or on his way to which he was apprehended. A magistrate or court may (s. 19)—where, by reason of the trivial nature of the case or of the application not being made in good faith, in the interests of justice or otherwise it would be unjust or oppressive, or too severe a punishment, considering the distance and the facilities of communication and all the circumstances, to return the prisoner either at all or before a certain period,—discharge the prisoner absolutely or on bail, or order him not to be returned till after a named period, or make any

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Orders in Council have been made forming the following groups of colonies to which Part II. of the Act is to apply, viz.:—

Group I., comprising

New South Wales,
Victoria,
South Australia,
Queensland,
New Zealand,
Tasmania,
Western Australia, and
Fiji,

by Order dated August 23, 1883:

Group II., comprising

Jamaica,
Turks and Caicos Islands,
British Guiana,
Trinidad,
The Leeward Islands,
Barbados,
S. Vincent,
Grenada,
S. Lucia,
Tobago,
The Bahamas, and
British Honduras,

by Order dated November 29, 1884.

In this group Part II. is only to apply to the

offences to which Part I. applies. No summons or other process shall be endorsed in any of the possessions of this group requiring any person to attend as a witness in any other of the said possessions on a charge for any offence other than treason, treason felony, murder, or rape, unless it is shown to the satisfaction of the judge, magistrate, or other officer endorsing such summons or process that such person can obey the summons or process without being absent from such first-mentioned possession for a period exceeding fourteen days. No person is to be bound to obey any summons or process endorsed in pursuance of section 15 in any of the said possessions except on payment or tender not only of a reasonable sum for his expenses, but also of a further reasonable sum or compensation for any loss, which such person or his or her family would sustain by reason of his or her absence from his or her place of residence for the purpose of obeying such summons or process; and the amount to be so paid or tendered shall be determined in case of difference by the judge, magistrate, or officer by whom the summons or process is endorsed.

Group III., comprising

Her Majesty's East Indian territories,

Ceylon, and

The Straits Settlements,

by Order dated December 12, 1885.

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Group IV., comprising
The Straits Settlements,
Hong Kong,
Labuan,
by Order dated December 12, 1885.

Group V., comprising
Cape of Good Hope,
Natal,
British Bechuanaland,
Basutoland,
Zululand;
and the parts of South Africa bounded by British Bechuanaland, the German Protectorate, the Rivers Chobe and Zambesi, the Portuguese Possessions, and the South African Republic;
by Orders dated November 17, 1888, and December 12, 1891.

To the parts of South Africa lastly defined Part I. also of the Fugitive Offenders Act is by the Order of December 12, 1891, applied.

In Part III. it is provided by s. 20 that offences committed on the boundary of two adjoining British possessions may be tried in either; similarly by s. 21 in the case of offences committed on a journey between British possessions; but no one not a British subject is to be tried for an offence not shown to have been committed in a British possession. By s. 22 the offence of giving or fabricating false evidence for the purposes of the Act

may be tried either in the part of Her Majesty's dominions where the evidence was used, or in that part where it was given or fabricated. For the purposes of the trial and punishment of an offence under this Act, and of preliminary, incidental, and consequential proceedings, the offence is to be deemed (s. 23) to have been committed in any place where the accused can be tried for it, and may be punished according to the Colonial Courts Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), *i.e.*, by the punishment due if the offence had been committed in the colony, or the punishment most nearly corresponding to that assignable if the offence had been tried in England.[1] Search warrants may (s. 24) be issued in any part of Her Majesty's dominions where a warrant under this Act is endorsed or the accused can be tried. A prisoner while being removed by sea in a British vessel from one part to another of the same British possession is to be deemed (s. 25) in legal custody and as if he were being removed under a warrant endorsed under this Act.

Part IV. directs how warrants are to be endorsed (s. 26) and executed, how fugitives and prisoners and witnesses are to be conveyed (s. 27), the mode of retaking and avenging the escape of prisoners (s. 28), of taking and authenticating depositions and warrants (s. 29), and defines the authorities by whom the jurisdiction under Part I. of the Act is to be exercised in England, Scotland,

[1] See *ante*, p. 172.

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Ireland, and British possessions, respectively (s. 30). By s. 33 provisions are made as to the application of the Act to offences triable in several parts of Her Majesty's dominions; by s. 34, as to convicts unlawfully at large; by s. 45, as to removal of accused triable in more than one part of Her Majesty's dominions to the part where the trial can most conveniently be had. Section 36 authorises Her Majesty to apply the Act by Order in Council, subject to any conditions, exceptions, or qualifications, to any place out of Her Majesty's dominions where she has jurisdiction. By s. 38 the Act is to apply to offences committed before its commencement or (in case of Part II.) before its application.

When a person is charged with an offence cognisable by a British court in a foreign country, Her Majesty's officials there may send him for trial and punishment to a British possession for the time being appointed in that behalf by Order in Council; and the court authorised thereto in such possession may keep him in custody and in due course try him, and on conviction punish him according to the laws in force within that possession, as if the crime or offence had been committed within its own jurisdiction.[1] This is a re-enactment of the provision in the repealed Foreign Jurisdiction Act of 1843, by Order in Council made under which, but continued in force by s. 18 of the existing Act, persons may be sent for trial from Siam to Singa-

[1] 53 & 54 Vict. c. 37 (Foreign Jurisdiction Act, 1890), s. 6.

pore, British Burmah (or some other part of British India), or any other British possession out of the United Kingdom, the Government of which consents; from China, Japan, and Corea to Hong Kong; from Morocco to Gibraltar or some other British possession out of the United Kingdom, the Government whereof consents; from Muscat to Bombay; from Madagascar to the Mauritius or Seychelles; from the Ottoman dominions to Bombay or Malta; from Persia to Bombay, Malta, or Cyprus; from Brunei to the Straits Settlements; from the continent of Africa to Sierra Leone, Gold Coast, Lagos, Cape Colony,[1] Natal,[1] or Zululand; from the Western Pacific to Fiji or some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof has consented that accused persons may be sent there for trial.[2]

Sentences of death, penal servitude, imprisonment, or any other punishment passed by British courts in foreign countries, may be carried into effect in such places as may be directed or determined in accordance with directions given by Order in Council.[3] This also re-enacts a provision in the repealed Act of 1843, by Orders in Council made under which, and kept in force by s. 18 of the existing Act, persons convicted in Siam may be

[1] Not without the consent of the colonial Government.

[2] British Consular Jurisdiction in the East, pp. 17, 18, 78, 79; Siam Order in Council, 1889; Morocco ditto, 1889; Africa ditto, 1889; Persia and Persian coasts and islands Orders in Council, 1889; Brunei Order in Council, 1890.

[3] 53 & 54 Vict. c. 37, s. 7.

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sent for imprisonment to the Straits Settlements, British Burmah (or any other part of British India) or to some other British possession the Government whereof consents; persons convicted in Zanzibar to Bombay or any other place in Her Majesty's dominions out of the United Kingdom the Government of which will receive them; in China, Japan, or Corea to Hong Kong; in the Ottoman dominions to Bombay, Malta, or Gibraltar; in the Western Pacific to Fiji or some other part of Her Majesty's dominions out of the United Kingdom, the Government of which has consented that offenders may be sent there; in Morocco to Gibraltar or another British possession the Government whereof consents; elsewhere on the continent of Africa to Sierra Leone, Gold Coast, Lagos, Cape Colony,[1] Natal,[1] Zululand; in Madagascar to the Mauritius or Seychelles; in Persia to Bombay, Malta or Gibraltar, or any other British possession the Government whereof consents; in Brunei to British Burmah (or some other part of British India), the Straits Settlements or any other British possession out of the United Kingdom the Government whereof consents.[2]

By s. 8 of the Act where, by Order in Council made in pursuance of the Act, any British court in a foreign country is authorised to order the removal or deportation of any person from that country, that removal or deportation, and any detention for

[1] Not without the consent of the colonial Government.

[2] British Consular Jurisdiction in the East, pp. 18, 78; and Orders in Council above cited.

the purposes thereof according to the provisions of the Order in Council, shall be as lawful as if the order of the court were to have effect wholly within that country. This re-enacts a provision of the repealed Foreign Jurisdiction Act of 1875, by Orders in Council made under which, and continued in force by s. 18 of the Act, criminal British subjects may on certain conditions be deported from Siam to Singapore or any other part of Her Majesty's dominions the Government whereof consents to receive them; from Morocco to some part of Her Majesty's dominions prescribed by the Secretary of State, or the Government of which consents to receive them; from Madagascar, or any part of the African continent and islands adjacent thereto, to the Mauritius or any of Her Majesty's African colonies or possessions, or any other part of Her Majesty's dominions directed by a Secretary of State; from Zanzibar to Bombay or any other part of Her Majesty's dominions out of the United Kingdom the Government of which consents to receive them; from China, Japan, or Corea to Hong Kong; from the Ottoman dominions to Bombay, Malta, or Gibraltar; from the Western Pacific to Fiji or any other part of Her Majesty's dominions out of the United Kingdom the Government whereof consents to receive them; from Persia to Bombay, Malta, Gibraltar, England, or any other part of Her Majesty's dominions the Government whereof consents to receive them; from Brunei to any part of Her Majesty's dominions prescribed

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by the Secretary of State, or the Government whereof consents to receive them.[1]

Her Majesty the Queen in Council may by Order assign to or confer on any Court in any British possession, or held under the authority of Her Majesty, any jurisdiction, civil or criminal, original or appellate, which may lawfully by Order in Council be assigned to or conferred on any British court in any foreign country, and may make provisions and regulations respecting the exercise of such jurisdiction, and the enforcement and execution of the judgments, decrees, and sentences of any such court, and respecting appeals therefrom.[2] This section again re-enacts a provision in the repealed Foreign Jurisdiction Act of 1866, by Orders in Council under which, kept in force by s. 18 of the present Act, the Supreme Court of Hong Kong was invested with jurisdiction in any place on land in China within ten miles of any part of the colony;[3] the exercise of jurisdiction in Siam by a judge of the Supreme Court of the Straits Settlements was authorised;[4] and every judge of a Superior Court of any African possession of Her Majesty may exercise within the limits of any prescribed local jurisdiction constituted by or under the Africa Order in Council, 1889, any power or authority which may be exercised by any

[1] British Consular Jurisdiction in the East, pp. 19, 82–86; and Orders in Council above cited, p. 191, n. 2.

[2] 53 & 54 Vict. c. 37, s. 9.

[3] Order in Council, Oct. 23, 1877.

[4] Siam Order in Council, Dec. 13, 1889.

court under that Order.[1] This enactment also appears to sanction the appeals granted by various Orders in Council from Her Majesty's Consular Courts in Morocco to Gibraltar; from Muscat and Zanzibar to Bombay; from Madagascar and the African Consular Courts to the Mauritius and other prescribed courts; from Siam to the Straits Settlements; from the Western Pacific to Fiji.[2]

Her Majesty in Council may confer on any Court in any British possession any such jurisdiction, civil or criminal, original or appellate, in respect of matters arising in any British settlement as might be conferred by virtue of the Act on a court in the settlement, and make provisions and regulations for its exercise and respecting appeals.[3]

No writ of *habeas corpus* may issue out of England by the authority of any judge or court of justice therein into any colony where Her Majesty has a lawfully established Court or Courts of Justice having authority to grant or issue the writ and to ensure its due execution in the colony.[4]

Where a Court in a colony causes a person to be delivered into military custody, or to be committed

[1] Art. 20 of the Order.

[2] British Consular Jurisdiction in the East, pp. 44, 45, 55, 56, 57; Orders in Council above cited, p. 191, n. 2.

[3] 50 & 51 Vict. c. 54 (British Settlements Act, 1887), s. 4. In s. 6 British settlement is defined as any British possession not acquired by cession or conquest, and not for the time being within the jurisdiction of the legislature, constituted otherwise than by virtue of the Act or of any Act repealed thereby, of any British possession.

[4] 25 & 26 Vict. c. 20, s. 1; passed in consequence of the decision *In the Matter of Anderson*, 30 L. J. Q. B. 129; 3 E. & E. 487.

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as a deserter from Her Majesty's regular forces, or remands a person charged, on his own confession, with being a deserter for the purpose of obtaining information as to the truth or falsehood of his confession, it must transmit to the general or other officer commanding the forces in the colony a descriptive return in relation to such deserter.[1] All offences prosecutable, all fines recoverable on summary conviction, and all proceedings which may be taken before a court of summary conviction, under the Army Act, may be prosecuted, recovered, and taken in any colony in such courts and in such manner as may be from time to time provided therein by law, or as the like offences, fines, and proceedings may be prosecuted, recovered, and taken, or as near thereto as circumstances admit.[2]

By the Bankruptcy Act, 1883,[3] the High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy.[4]

A suit pending in England is no bar to a subsequent suit in the colonies (*e.g.*, Jamaica) for the same matter.[5] And in an action in England the Court refused to strike out a counterclaim asking

[1] 44 & 45 Vict. c. 58, s. 154, sub-ss. 4, 6.
[2] Ibid. s. 168.
[3] 46 & 47 Vict. c. 52.
[4] S. 118.
[5] *Bayley* v. *Edwards*, 3 Swanst. 703.

for accounts already ordered in an action in Honduras, on the ground that the two actions were so closely connected that neither of them could be finally wound up independently of the other.[1]

When a person is entitled to administer the estate of a deceased person under the grant of probate of a court of the colony where the deceased was domiciled, the Court of Probate in England will make a grant to that person of administration with the will annexed.[2]

And now, where a court of probate in a British possession, whose legislature has made adequate provision for the recognition in that possession of probates and letters of administration granted by the Courts of the United Kingdom, has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to and a copy thereof deposited with a court of probate in the United Kingdom, be sealed with the seal of that court, and thereupon shall be of the like force and effect, and have the same operation in the United Kingdom, as if granted by that court.[3]

A native of the Gold Coast filed a bill in the High Court of Chancery in England alleging that he had taken the benefit of an Insolvent Act of that colony in consequence of a judgment against him in the colonial court, from which he had un-

[1] *Mutrie* v. *Binney*, L. R. 35 Ch. D. 614.

[2] *In the Goods of Earl*, L. R. 1 P. & D. 450.

[3] 55 Vict. c. 6 (Colonial Probates Act), ss. 1, 2. Probate includes confirmation in Scotland.

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successfully appealed to the Court of Appeal in the colony; that the assignee in England had assets in his hands, out of which, if the judgment were reversed, there would be a large surplus; that the judgment was erroneous, and an appeal would probably succeed; but that the assignee, colluding with the judgment creditor, refused to appeal to the Privy Council. The plaintiff then prayed the Court to decree that the assignee should prosecute the appeal, or to enable the plaintiff to prosecute the appeal in the assignee's name. The Court, however, refused to interfere, as it did not appear that the plaintiff had failed to obtain justice in the courts of his own country, which must be assumed to have full and ample powers to do complete justice.[1] And where a question on the construction of a contract for a security by way of mortgage had been before a court of competent jurisdiction in a colony, which directed a foreclosure and judicial sale, allegations of fraud being merely general and denied, the Court of Chancery in England refused to interfere.[2]

When the question in a case is one of fact, and there is evidence on both sides properly submitted to the jury, the verdict of the jury once found ought to stand; the setting aside of such a verdict should be of rare and exceptional occurrence.[3]

A verdict of a jury will not be disturbed as against evidence, or the weight of evidence, unless

[1] *Smith* v. *Moffatt*, L. R. 1 Eq. 397.

[2] *White* v. *Hale*, 12 Ves. 321.

[3] *Commissioner for Railways* v. *Brown*, L. R. 13 App. 133.

it is one which a jury, viewing the whole of the evidence reasonably, could not properly find.[1]

The judgments of colonial Courts have frequently been brought before the English Courts, usually for the purpose of concluding one of the parties to the English proceedings on the point adjudicated on in the colony.

In England colonial judgments stand upon the same footing as foreign judgments;[2] and as to both some difference of opinion has been displayed in the English cases as to their real nature, the effect to be given to them in English Courts, and the grounds upon which they should be enforced or not in those Courts. In *Hall* v. *Odber*[3] Lord Ellenborough, C.J., said that foreign judgments were but evidence of the debt, and that *assumpsit* lay on them, and that it was open to the parties to enter into the question of their regularity; in which opinion he was supported by all the other three judges of the Court. In another case, however, the same learned judge stated that "by the comity paid by us to the judgments of other Courts abroad of competent jurisdiction, we give full and binding effect to such judgments, so far as they profess to bind the persons and property immediately before them in judgment, and to which their adjudications properly relate."[4] This

[1] *Phillips* v. *Martin*, L. R. 15 App. 193.

[2] *Bank of Australasia* v. *Harding*, 9 C. B. p. 686; 19 L. J. C. P. 345; *Same* v. *Nias*, 16 Q. B. p. 735.

[3] 11 East, 118.

[4] *Power* v. *Whitmore*, 4 M. & S. 150.

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statement was quoted by the Judicial Committee of the Privy Council in the case of *Messina* v. *Petrococchino*[1] as firmly established doctrine, with the proviso, however, that foreign judgments might be impeached for manifest error, being obtained by fraud, or being wanting in the conditions of natural justice. In *Smith* v. *Nicolls*[2] Tindal, C.J., said that a colonial judgment was in the nature of evidence of a contract between the parties; while Bosanquet, J., thought it amounted to an agreement upon which an action of *assumpsit* would lie. In *Henley* v. *Soper*[3] Lord Tenterden gave it as his opinion that a promise to pay the debt ascertained by the decree of a colonial Court fixing the amount due from one of two partners to the other might and ought to be presumed;[4] while Wilde, C.J., in *Bank of Australasia* v. *Harding*,[5] said that in England the colonial judgment which was then in question was not a security of a higher nature than the prior simple contract debt; and cited with approval the opinion of Lord Brougham in *Houldsitch* v. *Donegal*,[6] that in this country a foreign judgment was only *primâ facie*, not conclusive, evidence of a debt. But Blackburn, J. (subsequently Lord Blackburn), in *Godard* v. *Gray*,[7] repudiated Lord Brougham's doctrine, and declared there was certainly no case decided upon

[1] L. R. 4 P. C. p. 157.
[2] 5 B. N. C. 208.
[3] 8 B. & C. 16.
[4] And see *Walker* v. *Witter*, 1 Doug. 1; and *Robertson* v. *Struth*, 5 Q. B. 941.
[5] 9 C. B. p. 686.
[6] 2 C. & F. 470.
[7] L. R. 6 Q. B. p. 149.

such a principle, and showed by reference to the mode of pleading that the judgment was considered as itself giving rise to a legal obligation to obey it, and to pay the sum adjudged. "If the judgment," he went on to say,[1] "was merely evidence of the original cause of action, it might be met by counter-evidence negativing the existence of such cause of action." And at one time there seems to have been an impression on the English bench that foreign (including colonial) judgments could be examined into and impeached upon the merits.[2] It may now, however, be considered as settled that when an action is brought on a judgment of a foreign or colonial court having jurisdiction over the parties to, and the subject-matter of, the suit, it cannot be impeached as being erroneous on the merits or mistaken in the law, whether of its own country or of England.[3] The principle upon which foreign and colonial judgments alike are supported and enforced has been declared to be that the judgment of a Court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the English Courts are bound to enforce.[4] Anything, therefore, which

[1] P. 150. [2] See *Walker* v. *Witter*, 1 Doug. 1, and notes.

[3] *Tarleton* v. *Tarleton*, 4 M. & S. 21; *Becquet* v. *McCarthy*, 2 B. & Ad. 95; *Martin* v. *Nicolls*, 3 Sim. 458; *Godard* v. *Gray*, L. R. 6 Q. B. 139; *Bank of Australasia* v. *Harding*, 9 C. B. 661; *Same* v. *Nias*, 16 Q. B. 717.

[4] *Williams* v. *Jones*, 14 L. J. Ex. 145; *Schibsby* v. *Westenholz*, L. R. 6 Q. B. p. 159; *Godard* v. *Gray*, L. R. 6 Q. B. p. 148; and *cf. Henderson* v. *Henderson*, 6 Q. B. p. 297.

negatives the duty cast upon the defendant to obey the foreign or colonial judgment, or forms a legal excuse for not performing it, is a defence to the action.[1] Accordingly it is open to the defendant to show that the Court had not jurisdiction over the subject-matter of the suit, or that he was never summoned to answer and had no opportunity of making his defence, or that the judgment was fraudulently obtained.[2] Perhaps it was in contemplation of these modes of impeaching a foreign judgment that it has been said to be only *primâ facie* evidence.[3] *Buchanan* v. *Rucker*[4] was an action on a judgment of the Island Court in Tobago. The defendant was described on the face of the proceedings as formerly of Dunkirk, now of London, and was stated thereon to have been summoned by nailing up a copy of the declaration at the court-house door; whereupon judgment was given by default. This was according to the island law in cases where defendants were absent from the island. The plaintiff was nonsuited, Lord Ellenborough saying that by persons absent from the island must necessarily be understood persons who have been present and within the jurisdiction of the court; but that the phrase

[1] L. R. 6 Q. B. p. 159.

[2] *Buchanan* v. *Rucker*, 9 East, 192; *Lord Cranstoun* v. *Johnson*, 3 Ves. 170; *Obicini* v. *Bligh*, 8 Bing. 335; *Abouloff* v. *Oppenheim*, L. R. 10 Q. B. D. 295; 52 L. J. Q. B. 1; *Messina* v. *Petrococchino*, L. R. 4 P. C. p. 157; *Vadala* v. *Lawes*, L. R. 25 Q. B. D. 310.

[3] Lord Campbell, C.J., in *Bank of Australasia* v. *Nias*, 16 Q. B. p. 735.

[4] 9 East, 192.

could not be applied to a person who, for aught that appears, never was present within or subject to the jurisdiction.[1]

A plea of *nul tiel record* to an action on a colonial judgment was held bad in *Philpott* v. *Adams*.[2]

Although the presumption would be that a foreign court in delivering judgment would be taken to know its own law, still when it clearly appeared by the admission of the parties that the law of the foreign tribunal had not been correctly declared by its judgment, the English Court held that the foreign judgment was not binding upon it.[3]

With respect, however, to colonial judgments there is a special consideration to be noticed: viz., that there is a duly constituted tribunal in England to which such judgments may be brought on appeal, and by which they may, if necessary, be corrected. Then, as Lord Campbell, C.J., put it in *Bank of Australasia* v. *Nias*,[4] either there has or has not been an appeal; in either case it seems contrary to principle and expediency for the same question to be again submitted to a jury in this country. A regular mode having been provided by which an erroneous judgment of a colonial Court may be examined and reversed, that mode ought to be pursued. In *Martin* v. *Nicolls*[5] a bill for a discovery and a commission to examine witnesses in Antigua, in aid of the plaintiff's defence to an

[1] And see and *cf. Schibsby* v. *Westenholz*, L. R. 6 Q. B. 155.
[2] 31 L. J. Ex. 421.
[3] *Meyer* v. *Ralli*, L. R. 1 C. P. D. 358.
[4] 16 Q. B. p. 736.
[5] 3 Sim. 458.

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action brought in England on a judgment obtained in Antigua, was refused on the ground that a foreign judgment was not examinable in the Courts of Westminster Hall; and that to allow the bill to stand would be to say that the judgment obtained in Antigua might be overruled by the English Court of Common Pleas. If the judgment was wrong, it was said, it might be set right by an appeal to the King in Council.[1] In *Tarleton* v. *Tarleton*[2] the plaintiff sued the defendant on a covenant to indemnify the plaintiff for all debts due from the late partnership of the plaintiff, defendant, and another. A decree of the Court of Chancery of Grenada against the late partners for payment of a debt due from the partnership was proved, and a sequestration thereon against the plaintiff's estate, whereby the plaintiff was forced to pay the debt. Lord Ellenborough said he did not sit to try a writ of error on the proceedings in the Court abroad; and the full Court refused a new trial. So also in *Henderson* v. *Henderson*[3] an injunction against the execution of a decree of equity of the Supreme Court of Newfoundland was refused by the Court of Chancery in England, an appeal to the Privy Council being the appropriate proceeding to take.

It is but a corollary to the above principle that the proceedings of a colonial Court will be presumed to have been regular, unless proof to the contrary is adduced. Thus, in an action of debt upon a

[1] 3 Sim. pp. 464-5. [2] 4 M. & S. 20. [3] 3 Hare, 100.

judgment of the Supreme Court of S. Vincent a demurrer to the declaration on the ground that it did not show that the defendant was ever subject to the jurisdiction of the Court was overruled.[1] So, in an action in the English Court of Queen's Bench on a decree of the equity side of the Supreme Court of Newfoundland awarding a sum of money to be paid to the plaintiff by the defendant the decree was enforced, it being presumed that right was done in the colonial Court, and whatever constituted a defence in the colonial Court should have been pleaded there.[2] Therefore pleas relying on a want of representative title in the plaintiff and of set-off were rejected. And in an action on a judgment of the Supreme Court of Jamaica obtained by default, Lord Ellenborough refused to allow the statement in the judgment that the defendant appeared by his attorney to be controverted, on the ground that foreign judgments must receive credit for the facts they specifically allege.[3] It has also been held that an action of debt is maintainable at law on a decree of a colonial Court of equity simply ascertaining a balance and ordering payment by the defendant to the plaintiff.[4] But owing to the changes in procedure made by the Judicature Act of 1873 and the amending Acts this point is now of no importance.

In order to maintain a suit in England for

[1] *Robertson* v. *Struth*, 5 Q. B. 941.
[2] *Henderson* v. *Henderson*, 6 Q. B. 288; *vide* ibid. p. 298.
[3] *Molony* v. *Gibbons*, 2 Camp. 502.
[4] *Smith* v. *Moffatt*, L. R. 1 Eq. 397.

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damages awarded by an Admiralty Court abroad (in Malta), the transcript of the proceedings in the Admiralty Court should show expressly, and not by mere inference, the sentence of the Admiralty Court, and that the defendant was within its jurisdiction.[1]

To bar an action in England a judgment in a colonial Court must be final and conclusive between the parties.[2]

An important difference between home and colonial judgments, so far as the remedy upon them at home is concerned, is pointed out by Tindal, C.J., in *Smith* v. *Nicolls*.[3] In the case of the former the plaintiff can issue an immediate writ of execution on the judgment; but the only mode by which an execution can be taken in England on a judgment recovered in a colonial Court is by bringing a new action on the judgment.

With reference to their effect upon controversies, judgments are divisible into the two classes of judgment *in rem* and judgment *inter partes*. The former are decisions upon the *status* of a particular subject by a tribunal competent to make such a decision, and are conclusive upon all persons whatever.[4] Judgments *inter partes*, though in general binding between the parties to them and their privies,[5]

[1] *Obicini* v. *Bligh*, 8 Bing. 335 (head-note).

[2] *Smith* v. *Nicolls*, 5 B. N. C. 208; *Plummer* v. *Woodburne*, 4 B. & C. 625; *cf. Nouvion* v. *Freeman*, *in re Henderson*, L. R. 15 App. 1.

[3] 5 B. N. C. p. 220.

[4] *Castrique* v. *Imrie*, 8 C. B. N. S., 1, 405; L. R. 4 H. L. 414.

[5] As to privies, *vide* notes to *Duchess of Kingston's Case*, 2 Sm. L. C.

do not affect the right of third parties.[1] The principal examples of judgments *in rem* were formerly found in the Ecclesiastical, Admiralty, Probate and Matrimonial Courts, and in certain revenue cases formerly brought in the Court of Exchequer. The jurisdiction of these Courts has now been transferred to the High Court of Justice.[2]

In the colonies there are no Inns of Court. Advocates and attorneys have always been admitted in the colonial Courts by the judges. The power of suspending from practice is incidental to that of admitting to practice. Therefore the Judicial Committee refused to advise Her Majesty to interfere with the order of the Justices of the Common Pleas in Antigua disbarring an advocate for professional and general misconduct.[3] And two orders of the Supreme Court of New Zealand, the first suspending, the second striking off the rolls, an attorney of that Court, applied for by a barrister practising in the Court, were sustained by the Judicial Committee.[4]

[1] *Castrique* v. *Imrie*, *ubi sup.*

[2] 36 & 37 Vict. c. 66, ss. 16, 34. A doubt as to the enforcement of judgments of Vice-Admiralty Courts was expressed in *Smith* v. *Nicolls*, 5 B. N. C. 208. Those Courts are not Courts of record, ibid., *per* Tindal, C.J. As to how the appointment of deputy-judge is made, *vide Rolet* v. *Regina*, L. R. 1 P. C. 198; for the form of proceedings, see *The Norma*, 34 L. T., N. S., 418, *The Inca*, Swa. 370; for security for costs, see *George* v. *Reg.*, L. R. 1 P. C. 389, 4 Moo. P. C. C., N. S., 287. As to differences in practice and jurisdiction, see *The Elizabeth*, 1 Hagg. 226. And *vide Hunter* v. *Prinsep*, 10 East, 378; *Hunter* v. *Parker*, 7 M. & W. 322; *The Segredo*, 1 Spk. E. & A. 57; *The Rajah of Cochin*, Swa. 472; *The Hercules*, 2 Dods. 353.

[3] *In re the Justices of the Common Pleas at Antigua*, 1 Knapp, 267.

[4] *Bunny* v. *Judges of New Zealand*, 15 Moo. P. C. C. 164.

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A Court of record in the colonies is the sole judge of what constitutes contempt of court. There is no remedy by petition to the Judicial Committee to review the propriety of orders imposing fines for contempts. The Judicial Committee has no jurisdiction to entertain petitions impugning the propriety of such orders.[1] Not a single case is to be found where there has been a committal by one of the colonial Courts for contempt, where it appeared clearly upon the face of the order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt was an appropriate one, in which the Committee has ever entertained an appeal against an order of that description.[2] But disbarring and striking off the rolls is not an appropriate punishment for contempt of court; and a petition against such an order will therefore be entertained, as well as against other inappropriate punishments.[3]

Thus a practitioner in the Supreme Court, Halifax, Nova Scotia, having written a letter in his private capacity as suitor to the Chief Justice complaining of a supposed grievance suffered by him as suitor, and reflecting on the judges and the adminis-

[1] *Rainy* v. *the Justices of Sierra Leone*, 8 Moo. P. C. C. 47.

[2] *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. p. 363.

[3] *Smith* v. *Justices of Sierra Leone*, 3 Moo. P. C. C. 361; *In re Downie and Arrindell*, 3 Moo. P. C. C. 414; as explained in *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341. As to the powers of the Royal Court of Jersey to commit without warrant for contempt of court, see *In re Wilson*, 9 Q. B. 984; 14 L. J. Q. B. 201; and of the Chancery Court of the Isle of Man, see *In re Crawford*, 13 Q. B. 613; 18 L. J. Q. B. 225.

tration of justice generally in the Court, was by order of the Court suspended from practising in the Court. On appeal the Judicial Committee discharged the order as substituting a penalty and mode of punishment not appropriate to the offence. The letter, though a contempt of court and punishable by fine and imprisonment, having been written by a practitioner in his individual and private capacity as a suitor, in respect of a supposed grievance as a suitor, of an injury done to him as such suitor, and having no connection whatever with his professional character or anything done by him professionally either as an attorney or barrister, it was not competent for the Supreme Court to go further than award to the offence the customary punishment for contempt of court, or to inflict a professional punishment of indefinite suspension for an act not done professionally, and which, *per se*, did not render the party committing it unfit to remain a practitioner in court.[1]

When an order suspending from practice is made upon grounds unsupported by evidence,[2] or without notice to the person concerned, or upon insufficient grounds,[3] or without giving time to prepare defence,[4] the Judicial Committee on appeal will rescind it.

In a recent case on appeal from Hong Kong[5] a

[1] *In re Wallace*, L. R. 1 P. C. 283.

[2] *In re Monckton*, 1 Moo. P. C. C. 455.

[3] *Smith* v. *Justices of Sierra Leone*, 7 Moo. P. C. C. 174.

[4] *Emerson* v. *Judges of Sup. Ct. of Newfoundland*, 8 Moo. P. C. C. 157.

[5] *In re Pollard*, L. R. 2 P. C. 106.

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barrister of the Supreme Court of that colony had been fined by the Chief Justice by order of Court, and adjudged to have been guilty of several contempts of court in disrespectfully addressing the Chief Justice while conducting a cause before him. The order was made without notice of the alleged contempt or rule to show cause, and without the appellant being heard in defence. The Judicial Committee reported to Her Majesty that in their judgment no person should be punished for contempt of court, which was a criminal offence, unless the specific offence charged against him was distinctly stated, and an opportunity of answering it given him; and that in that case they were not satisfied that was done before sentence passed; that they were not satisfied that each of the six offences, for which the sentence was received, amounted to a contempt of court or was legally an offence; and they recommended that the fine should be remitted.

A Judge of the Queen's Bench in Lower Canada, sitting alone in exercise of criminal jurisdiction, has no power under s. 72 of c. 77 of the Consolidated Statutes of Canada to pronounce a counsel in contempt for publishing two letters reflecting upon his conduct, or to impose a fine.[1] Where a fine is imposed, the remedy is to petition the Crown for a reference to the Judicial Committee under 3 & 4 Will. 4, c. 41, s. 4.[2]

In the year 1884 a question of some importance to Her Majesty's counsel who practise before the

[1] *In re Ramsay*, L. R. 3 P. C. 427. [2] Ibid.

Privy Council was submitted to the Attorney-General at the request of the judges. In consequence of the present facilities for rapid travelling it has become a matter of frequent occurrence for "silks" of the colonial Bar to come over to England and conduct in the Privy Council appeals from the various colonial Courts. On many occasions the Attorneys-General of various provinces have crossed for this purpose, and the question has often arisen whether by virtue of their office they could take precedence of Queen's Counsel of the English Bar. The Attorney-General (Sir Henry James, Q.C., M.P.) decided that as there is no precedent in existence, colonial Queen's Counsel shall be bound by the same rule that prevails at the English Bar, the Queen's Counsel of which have priority only according to the dates of their patents as Queen's Counsel.

The Judicial Committee has no jurisdiction to direct the release of a party imprisoned for a contempt of the Court below pending an appeal respecting the results of the suit.[1]

Under ss. 2 and 3 of the Rules of 31 March, 1870, only solicitors or others practising in London, or solicitors admitted by the High Courts in India or the corresponding Courts in the colonies, can be admitted to practise in the Privy Council. The Judicial Committee have no power to extend at their discretion the class of those eligible.[2]

[1] *Hughes v. Porral*, 4 Moo. P. C. C. 41.
[2] *In re Twidale's Petition*, L. R. 14 App. 328.

The Colonial Attorneys Relief Act[1] was passed to regulate the admission of attorneys and solicitors of colonial Courts in Her Majesty's Superior Courts of Law and Equity in England. It only takes effect, however, in the case of colonies where Her Majesty has by Order in Council directed it to come into operation.[2] No such Order in Council is to be made except upon the application of the Governor of the colony or his *locum tenens;* and until it is shown to the satisfaction of Her Majesty's Secretary of State for the Colonies that the system of jurisprudence for the colony is founded on or assimilated to the Common Law and principles of Equity as administered in England, that full service under articles of clerkship to an attorney for five years at least and a test examination are or may be required previous to admission as an attorney or solicitor in the colony, and that attorneys and solicitors of the English Courts are admitted in the Courts of the particular colony on production of their English certificates without service or examination.[3] These conditions being fulfilled, all British subjects duly admitted and enrolled in the Superior Courts of a colony may be admitted and enrolled as solicitors in the Supreme Court of Judicature in England.[4] Applicants must pass an examination of fitness and capacity,[5] unless they have been

[1] 20 & 21 Vict. c. 39, amended by 37 & 38 Vict. c. 41, and 47 & 48 Vict. c. 24.
[2] S. 2.
[3] Ss. 3, 7.
[4] S. 3; 36 & 37 Vict. c. 66, s. 87.
[5] 20 & 21 Vict. c. 39, ss. 4, 5 (part repealed by 51 & 52 Vict. c. 65, s. 20).

in actual practice for seven years at least as attorneys and solicitors in a colony as to which an Order in Council has been made as above mentioned after having served under articles and passed an examination;[1] and at such examination they must produce a certificate from the presiding judge of the Superior Court of Common Law in the colony stating that they are duly enrolled and entitled to practise in the colony, that there is no charge against their character, and the amount of stamp duty paid on their articles and admission.[2] On admission stamp duty has to be paid sufficient, with the amount paid in the colony, to equal the sum payable on articles of clerkship in England.[3] By the Amendment Act of 1884[4] Her Majesty may from time to time direct the Colonial Attorneys Relief Act to come into operation in a colony, although persons may in certain cases be admitted as attorneys or solicitors there without possessing all the qualifications for admission, or having fulfilled the conditions specified in s. 3 of that Act.[5]

Orders in Council have been made bringing into operation the above Acts in the following colonies, viz.:

New Zealand (June 24, 1885),
Cape of Good Hope (July 12, 1887),
Trinidad (August 19, 1889),
Western Australia (February 8, 1890).

[1] 37 & 38 Vict. c. 41, s. 1. [2] 20 & 21 Vict. c. 39, s. 4.
[3] Ibid. s. 6. [4] 47 & 48 Vict. c. 24. [5] S 1.

Judgments, decrees, orders, and other judicial proceedings of colonial Courts, as well as affidavits, pleadings, and other legal documents filed or deposited in colonial Courts, may be proved by examined or duly authenticated copies.[1] Documents admissible in evidence in England, Wales, or Ireland, without proof of the authenticating seal or stamp or signature, or of the judicial or official character of the person appearing to have signed the same, are admissible in evidence on the same terms in any British colony.[2]

*Primâ facie* evidence of any proclamation, order, or regulation issued by Her Majesty or by the Privy Council, or by or under the authority of the Commissioners of the Treasury, the Commissioners for executing the office of Lord High Admiral, the Secretaries of State, the Committee of the Privy Council for Trade, and the Poor Law Board, may be given, subject to any law that may be made by any colonial Legislature, in all colonial Courts, and in legal proceedings in the colonies by

1. The production of a copy of the *Gazette* purporting to contain such proclamation, order, or regulation; or
2. The production of a copy of such proclamation, order, or regulation purporting to be printed by the Government printer or

[1] 14 & 15 Vict. c. 99, s. 7, where mode of authentication is specified; *Appleton* v. *Lord Braybrook*, 6 M. & S. 34; *Buchanan* v. *Rucker*, 9 East, 192; *Clarke* v. *Emery*, 1 F. & F. 446; *Leishman* v. *Cochrane*, 12 W. R. 181.

[2] 14 & 15 Vict. c. 99, s. 11.

under the authority of the colonial Legislature; or

3. The production of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council, or by any member of the other public bodies above mentioned. No proof of the handwriting or official character of any person certifying is necessary.[1]

A statutory declaration was made in New South Wales in the most formal manner, and duly certified by a notary public, with reference to a fund in court, the subject of a suit in the High Court of Chancery in England. The declaration was not intituled in the cause. On an affidavit being made verifying the signatures of the declarants, it was allowed to be filed therewith.[2]

[1] 31 & 32 Vict. c. 37, ss. 2, 3.

[2] *Whiting* v. *Bassett*, L. R. 14 Eq. 70.

# CHAPTER V.

## APPEALS FROM THE COLONIES.

CHAP. V.

Appeals from the colonies.

IT is the settled prerogative of the Crown to receive appeals in colonial cases.[1]

The Queen has authority by virtue of her prerogative to review the decisions of all colonial Courts, whether the proceedings be of a civil or criminal character, unless Her Majesty has parted with such authority. But the inconvenience of entertaining such appeals in cases of a strictly criminal character is so great, the obstruction that it would offer to the administration of justice in the colonies is so obvious, that it is very rarely that applications of that character to the Judicial Committee have been attended with success.[2] Where, however, questions are raised of great and general importance, and likely to occur often; and where the due and orderly administration of the law has been interrupted or diverted into a new course, which might

[1] *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 156. As to appeals from colonial Courts of Admiralty, see 53 & 54 Vict. c. 27, s. 4.

[2] *National Islands Co. v. Reg.*, 1 Moo. P. C. C., N. S., p. 312; approved in *In re Pillet*, L. R. 12 App. 459; cp. *In re Ames*, 3 Moo. P. C. C. 422; *Rex v. Reg.*, L. R. 10 App. 675.

create a precedent for the future; and where there are no other means of preventing those consequences; an appeal will be entertained by the Committee.[1] But Her Majesty will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done.[2] Still less will Her Majesty be advised to grant leave to appeal in criminal cases where it is not even suggested or surmised that such injustice has been done.[3]

Where a Canadian Act, passed under the authority of an Imperial Act, limited the right of appeal to Her Majesty in Council to causes in which the sum in dispute was more than £500, saving however the rights and prerogatives of the Crown; and the sum in dispute was less than £500; leave to appeal was refused by the Privy Council.[4] In a subsequent case, however, where a similar point arose, leave to appeal was granted; and it was observed that in *Cuvillier* v. *Aylwin* the proviso in s. 43 of the Canadian Act (34 Geo. 3, c. 6), expressly reserving the royal prerogative, did not appear to have been directly adverted to.[5] And

[1] *Reg.* v. *Bertrand*, L. R. 1 P. C. 520; cp. *Reg.* v. *Murphy*, L. R. 2 P. C. 35, 535. And see *Reg.* v. *Coote*, L. R. 4 P. C. 599; *In re McDermott*, L. R. 1 P. C. 260.

[2] *In re Dillet*, L. R. 12 App. 459.

[3] *Ex parte Deeming*, L. R. (1892) A. C. 422.

[4] *Cuvillier* v. *Aylwin*, 2 Knapp, 72.

[5] *In re Marois*, 15 Moo. P. C. C. 189.

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in a recent case[1] the Judicial Committee overruled *Cuvillier* v. *Aylwin* upon the general principle that in any case where a prerogative of the Crown has existed, precise words must be shown to have taken it away. But their Lordships will not advise Her Majesty to admit an appeal from the Supreme Court of the Dominion of Canada, save where the case is of gravity, involving matter of public interest or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance, or of a very substantial character. Petition for special leave to appeal was accordingly refused in a case depending on a disputed matter of fact, whether there had been a gift or a sale of certain goods of the value of £1000;[2] but granted where there was an important question at issue.[3] So also special leave was refused to appeal from two concurrent judgments of the Courts in Canada affirming the competency and validity of an Act of the Dominion Parliament, it appearing that there was no substantial question to be determined nor any doubt of the soundness of the decisions, nor any reason to apprehend difficulty or disturbance from leaving the decisions untouched.[4]

In *Théberge* v. *Laudry*[5] the appellant had been elected a member of the Quebec Legislative

[1] *Cushing* v. *Dupuy*, L. R. 5 App. 409.
[2] *Prince* v. *Gagnon*, L. R. 8 App. 103.
[3] *Carter* v. *Molson*, ibid. 530.
[4] *Valin* v. *Langlois*, L, R. 5 App. 115.
[5] L. R. 2 App. 102.

Assembly, and afterwards unseated by the Superior Court under the Quebec Controverted Elections Act, 1875, for corrupt practices. Section 90 of the Act provided that the judgment of the Superior Court sitting in review should not be susceptible of appeal. Application for leave to appeal to Her Majesty in Council was refused by the Judicial Committee. This decision (as was explained in the subsequent case of *Cushing* v. *Dupuy*[1]) turned on the peculiar nature of the jurisdiction delegated to the Superior Court, and not merely on the prohibitory words of the statute. It was distinctly and carefully rested on the peculiarity of the subject-matter, which concerned not merely ordinary civil rights, but rights and privileges always regarded as pertaining to the Legislative Assembly in complete independence of the Crown, so far as they properly existed; and consequently it was held that, in transferring the decision of these rights from the Assembly to the Superior Court, it could not have been intended that the determination in the last resort should belong to the Queen in Council. But at the same time the general principle that the prerogative of the Crown cannot be taken away except by express words, was distinctly affirmed.[2]

There is an indisposition on the part of the Judicial Committee of the Privy Council to in-

[1] L. R. 5 App. 409; see p. 419.

[2] And *cf.* South Africa Union Act, 40 & 41 Vict. c. 47, s. 51.

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terfere with the forms and practice of colonial Courts.[1]

In a dispute in one of Her Majesty's colonies between two independent prelates, which previous to 25 Hen. 8, c. 29, would have been referred to the Pope, Her Majesty has appellate jurisdiction, and can exercise the same by referring the matter under 3 & 4 Will. 4, c. 41, for the advice of the Judicial Committee of the Privy Council.[2]

The Crown now exercises its prerogative to receive appeals from the colonies through the Judicial Committee of the Privy Council, which is the Court of Appeal in England from the colonies,[3] except in cases under the Merchant Shipping (Colonial Inquiries) Act, 1882,[4] by which an appeal lies from the colonial tribunal to the Probate, Divorce and Admiralty Division of Her Majesty's High Court of Justice in England.[5] The Judicial Committee of the Privy Council consists of the Lord President of the Privy Council; the Lord High Chancellor of Great Britain; all Privy Councillors who hold or have held any of the offices of Lord of Appeal in ordinary, Lord Chief Justice of England, Master of the Rolls, Lord Justice of the Court of Appeal, Judge of any of the late Courts

[1] *Grant* v. *Etna Insurance Co.*, 15 Moo. P. C. C. 516.

[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., 115.

[3] 3 & 4 Will. 4, c. 41, s. 2. And see 6 & 7 Vict. c. 38 (ss. 4, 6, 8, 13, 16 repealed, and the portions of s. 11 referring to Vice-Admiralty Courts); and 7 & 8 Vict. c. 69 (ss. 2–7 repealed, not affecting appeals from the colonies).

[4] 45 & 46 Vict. c. 76.

[5] Ibid. s. 6.

of Queen's Bench, Common Pleas, Exchequer, Probate, or Admiralty, or of Chief Judge in Bankruptcy; all past Presidents of the Council and Lord Chancellors; together with any two others whom Her Majesty shall think fit to appoint from time to time on the Committee,[1] and such members of Her Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Acts 1876 and 1887 described as high judicial offices.[2] These offices are those of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of one of Her Majesty's Superior Courts of Great Britain and Ireland, or of Lord of Appeal in ordinary, or of member of the Judicial Committee of the Privy Council. Her Majesty may also summon other Privy Councillors to the Committee.[3] By 34 & 35 Vict. c. 91 power was given to Her Majesty to appoint four paid members within twelve months, who had been either judges of a Superior Court at Westminster, or Chief Justices of the High Court of Judicature at Fort William, Madras, or Bombay, or of the late Supreme Court of Judicature at Fort William. Three members of the Committee form a *quorum*.[4]

By the laws in force in certain of the colonies at

[1] See 3 & 4 Will. 4, c. 41, s. 1; 37 & 38 Vict. c. 35, sched. as to 3 & 4 Will. 4, c. 41; 20 & 21 Vict. c. 77, s. 115; 39 & 40 Vict. c. 59, ss. 6, 14; 44 Vict. c. 3.

[2] 50 & 51 Vict. c. 70, s. 3.

[3] 3 & 4 Will. 4, c. 41, s. 5.

[4] 14 & 15 Vict. c. 83, s. 16.

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the time of the creation of this Court of Appeal in England from the colonies no appeals could be brought to Her Majesty in Council from any Courts in those colonies except Courts of Error or Appeal.[1] It was therefore enacted by 7 & 8 Vict. c. 69, s. 1, that it should be competent to Her Majesty by Order in Council to provide for the admission of appeals to herself in Council from any Court in any British colony or possession abroad, although such Court might not be a Court of Error or Appeal within the colony. *Russell* v. *Reg.*[2] was an appeal direct from the Supreme Court of New Brunswick without a prior resort to the Supreme Court of the Dominion of Canada.[3]

In order to prosecute an appeal from a colonial Court to Her Majesty in Council leave must be obtained from the Court below according to the rules in the colony with reference to such appeals.[4] If leave, however, has not been obtained from the Court below, either because there are no rules,[5] or because the Court below has no power to allow appeals direct to Her Majesty in Council,[6] or

[1] See *In re Assignees of Manning*, 3 Moo. P. C. C. 154; *In re Cambridge*, 3 Moo. P. C. C. 175.

[2] L. R. 7 App. 829.

[3] See *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P. C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

[4] A detailed account of these rules is given in Macpherson's Privy Council Practice.

[5] *Siemens* v. *Heirs of Bufe*, 11 Moo. P. C. C. 62.

[6] *Flint* v. *Walker*, 5 Moo. P. C. C. 179; *Bank of Australasia* v. *Breillat*, 6 Moo. P. C. C. 152; *Marchioness of Bute* v. *Mason*, 7 Moo.

because the rules in the colony have not been complied with—*e.g.*, in that the amount in dispute is less than the appealable value,[1] or that the time for presenting an appeal has expired,[2] or that proper security for costs has not been given,[3] &c., a petition to Her Majesty in Council may be presented for special leave to appeal, which will be referred to the Judicial Committee for them to advise whether it should be granted or refused.

A petition for special leave to appeal must state fully but succinctly the grounds upon which it is based, the record not being before their Lordships until forwarded by the proper authorities.[4]

When special leave to appeal has been given on an *ex parte* application and upon an erroneous statement contained in the petition for leave, the order allowing such leave will be discharged with costs.[5]

And where by a special agreement sanctioned by the Court below the petitioner had come in and consented to be made a party to the cause in appeal and to be barred by the order of the Court below made therein, and the agreement defined and restricted the powers of the Court below and

P. C. C. 1; *Bank of Australasia* v. *Harris*, 15 Moo. P. C. C. 97; *Bunny* v. *Judges of New Zealand*, 15 Moo. P. C. C. 164; *In re Cambridge*, 3 Moo. P. C. C. 175.

[1] See Topical Index of Cases on Appeal, Practice.

[2] See ibid. [3] Ibid.

[4] *Canada Central Railway Co.* v. *Murray*, L. R. 8 App. 574.

[5] *Bulkeley* v. *Scutz*, L. R. 3 P. C. 196; and *cf. Ex parte Baudains*, L. R. 13 App. 832.

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provided that its order should be considered a final disposition of all contentions whether then in litigation or not, special leave to appeal was refused on the ground that the Court below was acting on the terms of a special reference, and not in its ordinary jurisdiction as a Court of Appeal.[1]

When leave to appeal has been obtained, the appellant must prepare a transcript of the proceedings below and transmit it to the office of the Privy Council. Along with the transcript must be forwarded a written account of the reasons given by the judges of the Court below for the judgment pronounced by them.[2] If the transcript is not printed in the colony, the appellant must within a certain time call on the Registrar of the Privy Council to cause it, or such part of it as the appellant and respondent consider necessary, to be printed.

The transcript having been delivered at the Privy Council Office, the appellant presents his petition of appeal,[3] which usually merely contains a short statement of the proceedings below, and that the petitioner is aggrieved by the judgment, has obtained leave to appeal, and prays for a reversal. The petition is lodged by bringing it

[1] *Attorney-General of Nova Scotia* v. *Gregory*, L. R. 11 App. 229. For cases in which special leave to appeal has been granted or refused, see Topical Index of Cases on Appeal, Practice.

[2] See 7 & 8 Vict. c. 69, s. 11.

[3] Petitions of appeal from Canada may be presented before delivery of the transcript. See Macpherson's Practice, 2nd ed. p. 81.

into the Privy Council Office and leaving it with the clerks there.

Originally the petition was submitted to Her Majesty at the first Council meeting after the lodgment; when Her Majesty made an order referring it to the Judicial Committee to hear and report upon it.[1] Subsequently authority was given to the Judicial Committee to proceed in hearing and reporting upon appeals duly presented without any special Order in Council referring the same to them, provided that Her Majesty in Council had by Order in Council in the month of November directed that all appeals should be referred to the said Judicial Committee on which petitions might be presented to Her Majesty in Council during twelve months next after the making of such order.[2] This Order in Council is passed every November as a matter of course.

On hearing that the petition of appeal has been lodged, the respondent appears to it by sending a letter to the Registrar stating his full name, the Court appealed from, and the date of the judgment appealed from.

It is rather curious that there is no provision apparently for securing that notice of the appeal being lodged should be given to the respondent.[3] The proceedings in the Court below will, however, in ordinary cases have given him notice. If he does not appear the appellant may obtain a

[1] 3 & 4 Will. 4, c. 41, s. 3. [2] 7 & 8 Vict. c. 69, s. 9.

[3] See *Willis* v. *Gipps*, 5 Moo. P. C. C. p. 384

summons to him from the Judicial Committee to appear within two months, and post it at the Royal Exchange,[1] or Lloyd's Coffee House; followed, if necessary, by a peremptory order to appear in six weeks, posted at the same places. When the respondent has appeared, the parties prepare their respective cases, which are always drawn and signed by counsel.

The cases are prepared with the assistance of the transcript. The appellant's case details so much of the proceedings below as are necessary to support his view, placing in an appendix such parts of the transcript as require special notice, and cannot conveniently be inserted in the case itself. Then the reasons of the appeal are shortly set forth. No particular form is necessary.[2]

Each party delivers to his opponent a copy of his case, after he has lodged it. Whichever party first lodges his case may obtain an order on his opponent to lodge his within one month from service of the order; on default of compliance with which another order may be obtained for delivery of the case within a fortnight on pain of the cause being set down for hearing *ex parte*.

Finally the cause is set down in a list, and comes on in its turn for argument by counsel.

After hearing the arguments the Judicial Committee makes a report or recommendation to Her

[1] *Willis* v. *Gipps*, 5 Moo. P. C. C. p. 354.

[2] A precedent of cases on appeal for appellant and respondent respectively is given in Appendix I.

Majesty in Council, the nature of which is always stated in open court.[1] A majority of the members present must concur in such report or recommendation.[2]

An objection not raised in the Court below cannot be taken in the appellate Court unless it is patent on the face of the proceedings, so that the appellate Court can take judicial notice of it.[3]

Where a defendant objected to a verdict on the ground that it was not warranted by the evidence, but neglected to move the Court for a new trial in the manner directed by the rules and practice of the Court; it was held that Her Majesty in Council could not alter the verdict or set it aside, and could not be advised to direct a new trial, the defendant not having applied in that behalf to the Court in regular course.[4]

After an appeal has been admitted and referred to the Judicial Committee, interlocutory petitions should be addressed to the Committee, not to Her Majesty in Council.

The Judicial Committee has no jurisdiction to determine any matter litigated in an inferior Court except on appeal from that Court.[5]

But by s. 4 of 3 & 4 Will. 4, c. 41, Her Majesty may refer to the Judicial Committee any such

[1] 3 & 4 Will. 4, c. 41, s. 3. [2] Ibid. s. 5.

[3] *Frankland* v. *McGusty*, 1 Knapp, 274; *Devine* v. *Holloway*, 14 Moo. P. C. C. 290.

[4] *Dagnino* v. *Bellotti*, L. R. 11 App. 604.

[5] *In re Nahon and Pariente*, 2 Knapp, 66; *In re Levien*, 10 Moo. P. C. C. 31; *In re Gould*, 2 Moo. P. C. C. 183.

matter whatsoever other than appeals as Her Majesty shall think fit; and the Committee shall thereupon hear or consider the same, and shall advise Her Majesty thereon as in the case of regular appeals. It is under this enactment that such cases as those mentioned below[1] are brought before the Judicial Committee.

Where special leave to appeal has been granted on the ground that the appellant desires to raise a particular question of great and general importance, he cannot be permitted at the hearing to say that no such question arises, and to argue that the case turns upon a question of fact, on which the Court below was in error.[2]

Where a previous decision of the Judicial Committee has been given *ex parte*, although

[1] *In re Justices of the Court of Common Pleas at Antigua*, 1 Knapp. 267; *In re Monckton*, 1 Moo. P. C. C. 455; *In re George Whitfield*, 2 Moo. P. C. C. 269; *In re Muir*, 3 Moo. P. C. C. 150; *In re Wells*, ibid. 216; *Smith* v. *Justices of Sierra Leone*, ibid. 361; *In re Bailiff and Jurats of Royal Court of Guernsey*, 5 Moo. P. C. C. 49; *In re Island of Cape Breton*, ibid. 259; *Representatives of Island of Grenada* v. *Sanderson*, 6 Moo. P. C. C. 38; *Montagu* v. *Lieut.-Governor and Executive Council of Van Diemen's Land*, ibid. 489; *Smith* v. *Justices of Sierra Leone*, 7 Moo. P. C. C. 174; *Rainy* v. *Same*, 8 Moo. P. C. C. 47; *Emerson* v. *Judges of Supreme Court of Newfoundland*, 8 Moo. P. C. C. 157; *Cloete* v. *Reg.*, ibid. 484; *In re States of Jersey*, 9 Moo. P. C. C. 185; *In re Same, re Gibaut*, 11 Moo. P. C. C. 320; *The Jersey Bar*, 13 Moo. P. C. C. 195; *In re States of Guernsey*, 14 Moo. P. C. C. 368; *In re States of Jersey*, 15 Moo. P. C. C. 195; *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., 115; *In re Wallace*, L. R. 1 P. C. 283; *In re Pollard*, L. R. 2 P. C. 106; *MacDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341; *In re Ramsay*, L. R. 3 P. C. 427; *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442.

[2] *Corporation of St. John's* v. *Central Vermont Railway Co.*, L. R. 14 App. 590.

great weight is due to it, their Lordships are at liberty to examine the reasons upon which that decision was arrived at, and if they should find themselves forced to dissent from these reasons, to decide upon their own view of the law.[1]

The obligation put upon an appellant of giving bail for £200 under Rule 15 of the Privy Council Rules of 1865 for appeals in ecclesiastical and maritime causes may be dispensed with in a proper case. Accordingly it was dispensed with where bail had been already given in the colony for £300.[2]

Their Lordships will consolidate appeals at any stage if it appears convenient that they should be heard together.[3]

It is most desirable that Judges in the colonies should always comply with the rule of the Judicial Committee of the 10th February, 1845, as to giving reasons for their judgments.[4] Reasons given by a judge of a Court from which an appeal lies to the Privy Council ought to be stated publicly at the hearing and communicated to the Registrar of the Privy Council. Their Lordships will not look at notes merely communicated to one of the parties.[5]

[1] *Tooth* v. *Power*, L. R. (1891) A. C. p. 292.

[2] *Hunter* v. *S.S. Hesketh*, L. R. (1891) A. C. 628.

[3] *Hiddingh* v. *Denyssen*, L. R. 12 App. 107.

[4] *Colonial Insurance Co. of New Zealand* v. *Adelaide Marine Insurance Co.*, L. R. 12 App. 128. But as to notes of evidence, see *Baudains* v. *Liquidators of Jersey Banking Co.*, L. R. 13 App. 832.

[5] *Richer* v. *Voyer*, L. R. 5 P. C. p. 481; *Brown* v. *Gugy*, 2 Moo. P. C. C., N. S., p. 365.

CHAP. V.

Appeals from the colonies.

No injunction will be granted against a decree of a colonial Court by the Court of Chancery in England, an appeal lying to the Privy Council.[1]

When there have been concurrent findings of fact by the Judges or Courts below, the question on appeal to the Judicial Committee is not what conclusion their Lordships would have arrived at if the matter had for the first time come before them, but whether it has been established that the judgments below were clearly wrong.[2] Special leave to appeal in a case involving only an issue of fact will be refused.[3]

When a question of law is raised for the first time in a Court of last resort upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But that course ought not in any case to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have

[1] *Henderson* v. *Henderson*, 3 Hare 100. *Cf. Smith* v. *Moffatt*, L. R. 1 Eq. 397; *White* v. *Hall*, 12 Ves. 321.

[2] *Allen* v. *Quebec Warehouse Co.*, L. R. 12 App. 101.

[3] *Canada Central Railway Co.* v. *Murray*, L. R. 8 App. 574; *Prince* v. *Gagnon*, ibid. 103.

supported the new plea. To accept the proof adduced by a defendant in order to clear himself of a charge of fraud, as representing all the evidence which he could have brought forward in order to rebut a charge of negligence, might be attended with the risk of doing injustice.[1]

Where facts have not been submitted to the Court below, an appeal will not be granted on the ground that, if they had been so submitted, they would have caused the Court below to make a different order.[2] But evidence not adduced in the Court below, and not forming part of the transcript, has been admitted on motion to be used at the hearing of the appeal, subject to all just exceptions.[3]

Where a defendant objected to a verdict on the ground that it was not warranted by the evidence, but neglected to move the Court for a new trial in the manner directed by the rules and practice of the Court, the Judicial Committee held that Her Majesty in Council could not alter the verdict or set it aside, and could not be advised to direct a new trial, the appellant not having applied in that behalf to the Court in the regular course.[4] In *Stanford* v. *Brunette*[5] it was laid down that the record transmitted by the Court below is alone to be looked at; and that shorthand writer's notes cannot be received to impeach the judge's notes.

[1] *Connecticut Fire Insurance Co.* v. *Kavanagh*, L. R. (1892) A. C. p. 480.
[2] *Lyall* v. *Jardine*, L. R. 3 P. C. 318.
[3] *Hughes* v. *Porral*, 4 Moo. P. C. C. 41.
[4] *Dagnino* v. *Bellotti*, L. R. 11 App. 604.
[5] 14 Moo. P. C. C. 60.

PART V. Appeals from the Colonies.

The Judicial Committee is always extremely loth to send a case for re-trial, much more to decide it upon points which appear to have been raised for the first time at their Bar, and which may possibly have been treated as agreed upon or too clear for argument by the Court below.[1]

When a decision of the Judicial Committee has been reported to Her Majesty, and has been sanctioned and embodied in an Order in Council, it becomes the decree or order of the final Court of appeal; and it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.[2]

An action is maintainable in the Courts of England upon an order of the Judicial Committee directing payment of costs on an appeal from the judgment of a colonial Court on a petition of intervention in a suit by creditors for the attachment of debts and property of their debtor, the decree of the Judicial Committee being final as regards the petition of intervention, though not necessarily so in the main suit.[3]

Apparently the Crown has no greater right than a subject to be let in to appeal in a general case in which its interests are concerned.[4]

[1] *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. p. 409; *Owners of S.S. Pleiades* v. *Owners of S.S. Jane*, L. R. (1891) A. C. 259. As to disregard of technicalities of pleading by the Judicial Committee, see also *Le Breton* v. *Ennis*, 4 Moo. P. C. C. 331; *Black* v. *Ottoman Bank*, 15 Moo. P. C. C. 472; and *McLean* v. *McKay*, L. R. 5 P. C. p. 337.

[2] *Pitts* v. *La Fontaine*, L. R. 6 App. 482.

[3] *Hutchinson* v. *Gillespie*, 25 L. J. Ex. 103.

[4] *Laing* v. *Ingham*, 3 Moo. P. C. C. 26.

# CHAPTER VI.

## IMPERIAL STATUTES IN FORCE RELATING TO THE COLONIES.

### *Section* 1.

*Imperial Statutes relating to the Colonies in general.*



11 & 12 Will. 3, c. 12: Punishment in Great Britain of Governors of plantations for crimes by them committed in the plantations.[1]

18 Geo. 3, c. 12: Renouncing power of taxation in colonies, provinces, and plantations in North America and the West Indies.

22 Geo. 3, c. 75, ss. 2–4: Offices in colonies, amotion from,[2] leave of absence, &c. Amended by 54 Geo. 3, c. 61 (s. 5 to "and that" repealed).

42 Geo. 3, c. 85: Trial and punishment in Great Britain of persons employed in Her Majesty's service out of Great Britain for offences

[1] *Reg.* v. *Eyre*, L. R. 3 Q. B. 487. It is not clear whether this Act includes felonies or not, but its general scope seems to be confined to misdemeanours; see *R.* v. *Shawe*, 5 M. & S. 403; and Stephen's Criminal Procedure, iii. 49.

[2] *Willis* v. *Gipps*, 5 Moo. P. C. C. 379; *Montagu* v. *Lieut.-Governor and Executive Council of Van Diemen's Land*, 6 Moo. P. C. C. 489.

committed in the execution, or under colour, or in the exercise of any such employment.[1]

46 Geo. 3, c. 54: Trial in the colonies of offences committed upon the sea, &c., by commissions directed to four or more.[2]

54 Geo. 3, c. 61: Offices in colonies (s. 5 to "and that" repealed).

5 Geo. 4, c. 84, s. 26: Protecting felons whose sentences have been remitted by the Governor of a colony in the enjoyment of property acquired since conviction.[3]

5 Geo. 4, c. 113, ss. 2–8, 9 (except "after first day of January, 1825," and "after said first day of January, 1825," and from "and being convicted" to end of section), 12 (to "taken to be in full force"), 39, 40 and 47: Slave trade abolition.[4]

1 Will. 4, c. 4, s. 2: Providing for duration of patents of Governors after demise of the Crown.

1 Will. 4, c. 22 (ss. 3–5, 8–11 repealed): Granting writs of *mandamus* to judges of colonies, &c., to examine witnesses.[5]

[1] *R.* v. *Shawe*, 5 M. & S. 403; *General Picton's Case*, 30 State Trials, 225; *Reg.* v. *Eyre*, L. R. 3 Q. B. 487.

[2] See Stephen's History of the Criminal Law, ii. 20.

[3] *Vide Gough* v. *Davies*, 2 Kay & J. 623, 25 L. J. Ch. 677; *Fleming* v. *Smith*, 12 Ir. C. L. Rep. 404.

[4] *Sherwill* v. *The King*, 2 Moo. P. C. C. 1 (s. 10); *Del Campo* v. *Reg.*, 2 Moo. P. C. C. 15 (s. 7); *Barton* v. *Reg.*, 2 Moo. P. C. C. 19; *Jennings* v. *Hill*, 4 Moo. P. C. C. 369; *Hocquard* v. *Reg.*, 11 Moo. P. C. C. 155; *Casanova* v. *Reg.*, L. R. 1 P. C. 268.

[5] *Simms* v. *Henderson*, 11 Q. B. 1015; *Hodges* v. *Cobb*, L. R. 2 Q. B. 652; *Kelsall* v. *Marshall*, 11 C. B., N. S., 266. A *mandamus* will not in general be granted for the examination of a witness in a British colony, where the same end may be obtained by the less expensive and less dilatory proceeding by commission; *Farnworth* v. *Hyde*, 14 C. B., N. S., 719.

3 & 4 Will. 4, c. 41[1]: Establishing Judicial Committee of the Privy Council to hear appeals from the colonies. Amended by 6 & 7 Vict. c. 38 (ss. 4, 6, 8, 13, 16 repealed, and the portions of s. 11 referring to Vice-Admiralty Courts); 7 & 8 Vict. c. 69,[2] giving appeal from inferior Court in colony direct to Queen in Council (ss. 2–7, not affecting appeals from colonies, repealed); 14 & 15 Vict. c. 83, all of which Act is repealed except s. 16, last half of, s. 17, last sentence of except the date, s. 18, as to amount of Master of Rolls' salary, and s. 24. Preamble and s. 1 to "of same that"; as to Judge of Prerogative Court of Archbishop of Canterbury; as to the words "the Lord High Chancellor of Great Britain for the time being"; from "Lord Chief Justice" where first occurring to "bankruptcy"; and from "or held" to "Britain" repealed; amended by 50 & 51 Vict. c. 70, s. 3. Ss. 2, 22, 25–27, 29, repealed. S. 30 amended by 50 & 51 Vict. c. 70, s. 4.

3 & 4 Will. 4, c. 73,[3] s. 12, last half of: Abolishing slavery throughout the British colonies, plantations, and possessions abroad.

[1] *In re Pollard*, 2 P. C. 106; *In re Ramsay*, L. R. 3 P. C. 427, s. 4 (see *ante*, p. 210); *Logan* v. *Burslem*, 4 Moo. P. C. C. 284; *Hutchinson* v. *Gillespie*, 2 Moo. P. C. C. 243 (s. 17); *Falle* v. *Le Sueur*, 12 Moo. P. C. C. 501 (s. 7).

[2] *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P. C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

[3] *Richards* v. *A.-G. of Jamaica*, 6 Moo. P. C. C. 381; *Mittelholzer* v. *Fullarton*, 6 Q. B. 989.

CHAP. VI. Sect. 1. Imperial Statutes relating to the colonies in general.

5 & 6 Vict. c. 45[1]: Copyright. Amended by 10 & 11 Vict. c. 95.

6 & 7 Vict. c. 7: Pardon of transported convicts; holding of property by ticket of leave men. Sections 1 and 6 repealed.[2]

6 & 7 Vict. c. 22: Authorising colonial legislation for admission of evidence of barbarous and uncivilised people in the colonial Courts or before colonial magistrates. Section 2 repealed.

6 & 7 Vict. c. 38: Appeals to Judicial Committee of the Privy Council. Sections 1, 4, 6, 8, 13, 16 repealed, and the portions of s. 11 referring to Vice-Admiralty Courts. Sections 2, 3, 5, 7, 9, 10, 12, 15, partially repealed by 53 & 54 Vict. c. 27.

6 & 7 Vict. c. 98: Suppression of slave trade; colonial judges to act in. Sections 2, 3, 5–7 repealed.

7 & 8 Vict. c. 49, ss. 2, 9, 10: Posts in colonies, rates of postage; so far as not inconsistent with the Post Office Act, 1875 (38 & 39 Vict. c. 22), of which see s. 14.

7 & 8 Vict. c. 69[3]: Appeals to Judicial Committee of Privy Council. Sections 2–7, 13, not affecting appeals from colonies, repealed; in s. 12 the words "from Admiralty and Vice-Admiralty Courts," and so much as relates to maritime courts, repealed.

[1] *Low* v. *Routledge*, L. R. 1 Ch. App. 42; 3 H. L. 100 (*nom. Routledge* v. *Low*).

[2] *Barnett* v. *Blake*, 2 Drew. & Sm. 117.

[3] *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P. C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

10 & 11 Vict. c. 95: Colonial Copyright Act; protection in colonies of works entitled to copyright in United Kingdom. Section 3 repealed. See 49 & 50 Vict. c. 33, ss. 8, 9.

12 & 13 Vict. c. 66: To enable colonial legislatures to establish inland posts. Sections 5, 7 repealed.

12 & 13 Vict. c. 96[1]: Prosecution and trial within colonies of offences committed within the jurisdiction of the Admiralty. Section 2, 5 from "and the word Governor" to end, repealed.

14 & 15 Vict. c. 83: Judicial Committee of Privy Council. Repealed except ss. 16, last half of, 17, last sentence of except date, 18, as to amount of Master of Rolls' salary, 24.

14 & 15 Vict. c. 99, ss. 7, 11[2]: Proof of colonial proclamations, treaties, Acts of State, judgments, &c., and other judicial proceedings, and legal documents.

15 & 16 Vict. c. 39: Sale moneys of lands in colonies, appropriation of.

15 & 16 Vict. c. 52: Colonial bishops acting in England. Extended by 16 & 17 Vict. c. 49, and amended by 37 & 38 Vict. c. 77, ss. 8, 13.

16 & 17 Vict. c. 48: Punishment of coin offences in colonies except where other provision made by colonial Acts; power to make such provision. Pre-

[1] *Reg.* v. *Mount*, L. R. 6 P. C. 283. See this case as to application to the colonies of 20 & 21 Vict. c. 3, abolishing transportation.

[2] *Baillie* v. *Jackson*, 3 De G. M. & G. 38; 22 L. J. Ch. 753; *Leishman* v. *Cochrane*, 1 Moo. P. C. C., N. S., 315; *Clarke* v. *Emery*, 1 F. & F. 446. See *Appleton* v. *Lord Braybrooke*, 6 M. & S. 34; *Buchanan* v. *Rucker*, 9 East, 192.

[illegible] authority of same, as follows"; s. 2, "at the discretion of the court," and from "or of any term" to the end; repealed.

16 & 17 Vict. c. 49: Colonial bishops acting in colonial dioceses other than their own.

16 & 17 Vict. c. 70, ss. 58, 59: Affidavits in Lunacy: penalties.

16 & 17 Vict. c. 84, s. 1: Number of Asiatic and African passengers in ships.

16 & 17 Vict. c. 107, ss. 165, 166, 181–183, 185, 187, 188: Regulations as to customs; so far as they relate to those of Her Majesty's possessions abroad in which other provisions have not been substituted by local Act or Ordinance with the sanction of Her Majesty; ss. 327, 330, 331: Regulations as to import and export and trade in certain colonies.

17 & 18 Vict. c. 104, ss. 17–24, 26–28, 30–33, 36, 37 (except sub-s. 2), 38–108, so much of Part III. as defined in ss. 109, 288–290, 514, 547: Merchant shipping (colonial).[1] Last phrase of s. 242, sub-s. 5, repealed. And see *post*, 32 & 33 Vict. c. 11; 45 & 46 Vict. c. 76, as to colonial courts of inquiry.

18 & 19 Vict. c. 91, ss. 2–8: Erection and maintenance of colonial lighthouses.

18 & 19 Vict. c. 119, ss. 52, 84, 95–98: Application of Passengers Act to colonial voyages; proclamations by Governor, how proved.

[1] *The Rajah of Cochin*, Swa. 473; *Phillips* v. *Highland Railway Co., The Ferret*, L. R. 8 App. 329 (s. 189); *Chateauneuf* v. *Capeyron*, L. R. 7 App. 127.

19 & 20 Vict. c. 113: Taking evidence as to civil and commercial matters pending before foreign tribunals. Extended to non-political criminal matters pending in foreign courts by 33 & 34 Vict. c. 52 (Extradition), s. 24. Section 6, from "provided" to the end, repealed.

20 & 21 Vict. c. 3: Abolition of transportation.[1] Sections 7, 8 repealed; also s. 3 to "other cases," and the words "now or hereafter"; also in s. 4 the words "or chief governor or governors."

20 & 21 Vict. c. 39: Admission of attorneys and solicitors of certain colonial Courts to English Superior Courts. Amended by 37 & 38 Vict. c. 41, and 47 & 48 Vict. c. 24; s. 5 amended by 51 & 52 Vict. c. 65, s. 20. Verbal amendments in 55 & 56 Vict. c. 19.

21 & 22 Vict. c. 72, s. 34: Affidavits in Landed Estates Court, Ireland.

21 & 22 Vict. c. 90, s. 46: Medical practitioners in the colonies. Verbally amended by 55 & 56 Vict. c. 19.

22 Vict. c. 20: Taking evidence in colonies for purposes of any court or tribunal in Her Majesty's dominions.[2] Amended by 48 & 49 Vict. c. 74.

22 Vict. c. 25: Government of convict prisons in Her Majesty's dominions abroad. Section 1 repealed.

22 & 23 Vict. c. 12: Authorising repeal by

[1] As to where applicable to colonies, see *Reg.* v. *Mount*, L. R. 6 P. C. 283.

[2] *Campbell* v. *Attorney-General*, L. R. 2 Ch. App. 571.

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colonial legislatures of 54 Geo. 3, c. 15, ss. 1–3, and 5 & 6 Will. 4, c. 62, ss. 15, 17. Section 1 repealed.

22 & 23 Vict. c. 31, ss. 29, 30: Affidavits in Court of Probate, Ireland; penalties.

22 & 23 Vict. c. 63: To afford facilities for ascertaining the law administered in one part of Her Majesty's dominions when pleaded in the courts of another part thereof.[1]

23 & 24 Vict. c. 122: Admiralty offences (colonial) Act; enabling colonial legislatures to make enactments as to the trial and punishment of offences in respect of persons who, being feloniously stricken, poisoned, or otherwise hurt within any of Her Majesty's possessions abroad, die thereof on the sea or beyond the limits of such possession, within the possession within which such stroke, poisoning, or hurt happened.

24 & 25 Vict. c. 11: Power to any Superior Court in Her Majesty's dominions to send case for opinion of a Superior Court in foreign State with which Her Majesty has convention for the purpose; reciprocal power of foreign State.[2]

25 Vict. c. 20: Prohibition of issue of writ of *habeas corpus* into any colony having a court authorised to grant the same.[3]

26 & 27 Vict. c. 76: Time at which Letters

[1] *Lord* v. *Colvin*, 29 L. J. Ch. 297; 1 Drew. & Sm. 24.

[2] No convention has been entered into under this Act.

[3] Passed in consequence of the decision *In the matter of John Anderson*, 3 E. & B. 487; 30 L. J. Q. B. 129.

Patent are to take effect in the colonies. S. 4 repealed.

26 & 27 Vict. c. 84: Confirming Constitution Acts of colonial legislatures.

28 & 29 Vict. c. 14: Colonial naval defence.

28 & 29 Vict. c. 63: Validity of colonial laws.[1]

28 & 29 Vict. c. 64: Establishing validity of colonial marriage laws.

28 & 29 Vict. c. 106: Loans for construction of colonial docks.

28 & 29 Vict. c. 113: Retiring pensions to colonial Governors. Amended by 35 & 36 Vict. c. 29, and 50 & 51 Vict. c. 13.

30 & 31 Vict. c. 44, ss. 81–83: Answers, &c., in High Court of Chancery, Ireland. Extended by 34 & 35 Vict. c. 22, s. 25, to affidavits in Lunacy.

30 & 31 Vict. c. 114, ss. 57–59: Answers, &c., in Admiralty Court, Ireland.

30 & 31 Vict. c. 124, s. 6: Power to Governors of British possessions out of United Kingdom to make regulations as to supply of lime or lemon juice, &c., for use of ships.

31 & 32 Vict. c. 37: Documentary evidence. Amended by 45 & 46 Vict. c. 9.

31 & 32 Vict. c. 129: Colonial shipping (Registration).

32 Vict. c. 10: Removal of prisoners from one

[1] *L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31 (s. 5); *Bank of Australasia* v. *Nias*, 16 Q. B. 717; 20 L. J. Q. B. 284 (s. 3).

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colony to another for purpose of punishment. Ss. 3, 8, repealed; and see *post*, 47 & 48 Vict. c. 31.

32 & 33 Vict. c. 11: Merchant shipping (colonial); coasting trade; registrars; certificates.[1] S. 5 repealed. Amended by 46 & 47 Vict. c. 41.

33 & 34 Vict. c. 10, s. 11: Coinage.

33 & 34 Vict. c. 14, s. 16: Power of colonies to legislate as to naturalisation: ss. 3, 6 (2), declaration of alienage, how made in colonies; s. 8, jurisdiction of Governors as to readmission of statutory aliens to British nationality.

33 & 34 Vict. c. 52, ss. 17, 18: Extradition of criminals; s. 24, evidence on non-political matters pending in foreign courts. Amended by 36 & 37 Vict. c. 60.

33 & 34 Vict. c. 90: Foreign enlistment. S. 31 repealed.

33 & 34 Vict. c. 97, sched. *sub fin.*: Exemption from stamp duty of instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any colony of any person as artificer clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.

34 & 35 Vict. c. 22, s. 25: Affidavits in Lunacy, Ireland.

34 & 35 Vict. c. 49, ss. 18, 19: Affidavits in Court for Matrimonial Causes, Ireland; penalties.

35 & 36 Vict. c. 29: Amendment of Colonial

[1] See *ante*, 17 & 18 Vict. c. 104.

Governors Pensions Act, 1865. Amended by 50 & 51 Vict. c. 13.

35 & 36 Vict. c. 44, s. 25 : Provision as to certain slave compensation funds standing in the name of the Accountant-General ; reversion to the public of.

36 & 37 Vict. c. 88 : Suppression of slave trade ; action of colonial authorities and courts as to. Ss. 20 and 23 partially repealed by 53 & 54 Vict. c. 27, s. 18 ; s. 30 and 2nd sched. repealed.

37 & 38 Vict. c. 27 : Regulating sentences of colonial Courts when jurisdiction to try given by Imperial Acts.[1]

37 & 38 Vict. c. 41 : Amendment of Colonial Attorneys Relief Act (20 & 21 Vict. c. 39).

37 & 38 Vict. c. 77 : Colonial clergy. Ss. 2, 10, and schedules, repealed.

37 & 38 Vict. c. 94, s. 51 : Probate of will issued in colony equivalent to will for completing title to land in Scotland.

39 & 40 Vict. c. 36, s. 149 : Powers of commissioners as to customs, &c., vested in Governors, &c., of colonies ; ss. 151, 161, Customs Acts to extend to colonies except where otherwise provided, or where provision for management of customs made by local Ordinance or Act ; colonial laws, &c., repugnant to Customs Acts, to be void ; s. 153, forfeiture of goods of foreign manufacture imported into colonies if bearing names or brands of manufacturers resident in the United Kingdom.

[1] Passed in consequence of decision in *Reg.* v. *Mount*, L. R. 6 P. C. 283.

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39 & 40 Vict. c. 80, s. 17 : Colonial certificates for passenger steamers; s. 4, Governor's leave necessary for prosecution of unseaworthy ships in British possessions.

40 & 41 Vict. c. 23 : Transferring to Governor of colony fortifications held in trust for defence of colony.

40 & 41 Vict. c. 57, s. 74 : Affidavits, &c., in Supreme Court of Judicature, Ireland.

40 & 41 Vict. c. 59 : Colonial stock. Amended by 43 & 44 Vict. c. 20, s. 54; 55 & 56 Vict. c. 35.

41 & 42 Vict. c. 73 : Territorial Waters Jurisdiction Act; regulating proceedings relating to trial of offences committed at sea within a certain distance of the coast of Her Majesty's dominions.

44 & 45 Vict. c. 58, ss. 54 (4, 7, 9), 94, 122 (6), 131 (1), 132, 154 (4, 6), 168, 169, 177, 189 (2, 3, 4): The army in the colonies.

44 & 45 Vict; c. 69[1]: Fugitive Offenders Act.

45 & 46 Vict. c. 76 : Colonial courts of inquiry under the Merchant Shipping Acts, 1854–1880.

46 & 47 Vict. c. 30 : Companies registered under Companies Act, 1862, authorised to keep local registries of their members in British colonies. S. 7 amended by 52 & 53 Vict. c. 42, s. 18.

46 & 47 Vict. c. 52, s. 118 : Bankruptcy courts to be auxiliary to each other[2]; s. 168, land situate in England or elsewhere to pass to trustee.[3]

[1] See *Reg.* v. *Phillips*, 1 F. & F. 105.

[2] *Cf. In re Levy's Trusts*, L. R. 30 Ch. D. 119.

[3] *Cf. Callender, Sykes & Co.* v. *Colonial Secretary of Lagos*, L. R. (1891) A. C. 460.

46 & 47 Vict. c. 57, ss. 103, 104 : Patents.[1]

46 & 47 Vict. c. 58, s. 4 : Extension of 43 & 44 Vict. c. 33, respecting money orders to British possessions.

47 & 48 Vict. c. 24 : Amendment of 20 & 21 Vict. c. 39 (Colonial Attorneys Relief Act).

47 & 48 Vict. c. 31 : Colonial prisoners removal (in effect authorising intercolonial transportation).[2]

48 & 49 Vict. c. 74 : Amendment of law relative to taking evidence in India and the colonies and elsewhere in Her Majesty's dominions.

49 & 50 Vict. c. 33, ss. 8, 9 : Copyright in colonies. And see 10 & 11 Vict. c. 95, *ante*.

49 & 50 Vict. c. 48 : Medical Act, Part II. ; Registration of colonial practitioners, &c.[3]

50 & 51 Vict. c. 13 : Pensions (colonial service); application of Superannuation Acts to colonial civil service and of colonial Pension Act to High Commissioner in Cyprus.

50 & 51 Vict. c. 54 : Government of British settlements in places where there is no civilised government.

50 & 51 Vict. c. 62, s. 3 : Powers of colonial

[1] Applied to New Zealand by Order in Council, *Lond. Gaz.* 1890, p. 727.

[2] An Order in Council, dated December 13, 1889, has been issued making regulations for the removal and return of prisoners and criminal lunatics under this Act; also one, dated October 17, 1884, applying it to Cyprus.

[3] Orders in Council have been made under s. 17 of the Act applying Part II. to the following colonies: New Zealand (March 25, 1887), Ceylon (December 29, 1887), New South Wales (March 21, 1890), Victoria (March 21, 1890), South Australia (February 21, 1891).

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Governors to approve ports of registry and appoint surveyors of British ships.

50 & 51 Vict. c. 70, ss. 3, 4: Amending constitution and providing for remuneration of Judicial Committee of Privy Council.

52 Vict. c. 10: For amending and consolidating enactments relating to the administration of oaths; see especially s. 3.[1]

52 & 53 Vict. c. 52: Official Secrets.

53 Vict. c. 9, s. 3: Load-lines on ships registered in British possessions.

53 & 54 Vict. c. 27[2]: Colonial Courts of Admiralty Act, 1890.

53 & 54 Vict. c. 25: Barracks.

53 & 54 Vict. c. 37, s. 6: Power to British authorities in foreign countries to send for trial to British possessions persons charged with offences cognisable by British Courts in such foreign countries; power to Courts in British possessions to try and punish such persons; s. 9: Power to Queen in Council to assign same jurisdiction to Courts in British possessions as to British Courts in foreign countries.[3]

[1] The following cases were decided under 15 & 16 Vict. c. 86, ss. 22–24: *Re Goss's Estate*, 12 Jur. N. S. 595; *Crofts* v. *Middleton*, 9 Hare, App. xviii., lxiv.; *Baillie* v. *Jackson*, 3 De G. M. & G. 38, 22 L. J. Ch. 753; *Bateman* v. *Cooke*, 3 De G. M. & G. 39, 22 L. J. Ch. 744; *Sleight* v. *Lawson*, 26 L. J. Ch. 553, 3 K. & J. 292; *Armstrong* v. *Stockham*, 24 L. J. Ch. 176.

[2] *Vide Casanova* v. *Reg.*, 3 Moo. P. C. C., N. S., 484 (under the old Act). See s. 16 and 1st sched. as to delay of operation of Act in New South Wales, Victoria, St. Helena, British Honduras.

[3] The Order in Council of 23 October, 1877, giving the Supreme

54 & 55 Vict. c. 31, ss. 3, 8: Mail Ships Act, 1891; application of to British possessions.

54 & 55 Vict. c. 43, s. 5: Forged Transfers Act, 1891; application of to colonial stock.

55 Vict. c. 6: Providing for the recognition in the United Kingdom of probates and letters of administration granted in British possessions.

55 & 56 Vict. c. 23: Marriage of British subjects outside the United Kingdom.

55 & 56 Vict. c. 35: Colonial stock.

## *Section* 2.

### *Subjects of Imperial Legislation relating to the Colonies in general.*



Abroad, offences committed by persons in Her Majesty's service, trial and punishment of in Great Britain: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Admiralty offences, trial of: 12 & 13 Vict. c. 96.

Admiralty, colonial courts of: 53 & 54 Vict. c. 27.

Affidavits, &c., in Court for Matrimonial Causes, Ireland: 34 & 35 Vict. c. 49, ss. 18, 19.

Affidavits, &c., in Court of Probate, Ireland: 22 & 23 Vict. c. 31, ss. 29, 30.

Affidavits, &c., in Landed Estates Court, Ireland: 21 & 22 Vict. c. 72, s. 34.

Court of Hong Kong jurisdiction in any place on land in China within ten miles of any part of the colony, &c., was issued under 29 & 30 Vict. c. 87, of which this is a re-enactment. This provision would seem also to be necessary to authorise the exercise of jurisdiction in Siam by a judge of the Supreme Court of the Straits Settlements, as provided for by the Siam Order in Council, 1889.

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Affidavits, &c., in Lunacy: 16 & 17 Vict. c. 70, ss. 58, 59.

Affidavits, &c., in Lunacy, Ireland: 34 & 35 Vict. c. 22, s. 25.

Affidavits, &c., in Supreme Court of Judicature, Ireland: 40 & 41 Vict. c. 57, s. 74.

Answers, &c., in High Court of Chancery in Ireland: 30 & 31 Vict. c. 44, ss. 81–83.

Answers, &c., in Admiralty Court, Ireland: 30 & 31 Vict. c. 114, ss. 57–59.

Army, the, in the colonies: 44 & 45 Vict. c. 58, ss. 54 (4, 7, 9), 94, 122 (6), 131 (1), 132, 154 (4, 6), 168, 169, 177, 189 (2, 3, 4).

Ascertainment of law of one part of Her Majesty's dominions for the purpose of trials in other parts: 22 & 23 Vict. c. 63.

Asiatic and African passengers in ships, number of: 16 & 17 Vict. c. 84, s. 1.

Attorneys and solicitors, admission of colonial to English Courts: 20 & 21 Vict. c. 39; 37 & 38 Vict. c. 41; 47 & 48 Vict. c. 24; 51 & 52 Vict. c. 65, s. 20.

Bankruptcy Courts to be auxiliary to each other; land to pass to trustee: 46 & 47 Vict. c. 52, ss. 118, 168.

Barracks: 53 & 54 Vict. c. 25.

Bishops, colonial, acting in England: 15 & 16 Vict. c. 52; 16 & 17 Vict. c. 49; 37 & 38 Vict. c. 77, ss. 8, 13.

British settlements in uncivilised places, government of: 50 & 51 Vict. c. 54.

Case for opinion of Superior Court in foreign State, sending of by a Superior Court in Her Majesty's dominions; and reciprocally: 24 & 25 Vict. c. 11.

Coinage: 33 & 34 Vict. c. 10, s. 11.

Coin offences, punishment of: 16 & 17 Vict. c. 48.

Colonial clergy: 37 & 38 Vict. c. 77 (ss. 2, 10, and schedd. repealed).

Colonial Courts of Admiralty: 53 & 54 Vict. c. 27.

Colonial Courts, sentences of: 37 & 38 Vict. c. 27.

Colonial Courts, jurisdiction of under Foreign Jurisdiction Act: 53 & 54 Vict. c. 3, s. 9.

Colonial Courts of inquiry under Merchant Shipping Acts, 1854–1880: 45 & 46 Vict. c. 76.

Colonial laws, validity of: 28 & 29 Vict. cc. 63, 64.

Colonial prisoners removal: 32 Vict. c. 10 (ss. 3, 8, repealed); 47 & 48 Vict. c. 31.

Companies, local registers of members of in British colonies: 46 & 47 Vict. c. 30; 52 & 53 Vict. c. 42, s. 18.

Constitution Acts, confirmation of: 26 & 27 Vict. c. 84.

Convict prisons, government of: 22 Vict. c. 25 (s. 1 repealed).

Convicts, pardon of transported: 6 & 7 Vict. c. 7 (preamble and ss. 1, 6, repealed).

Copyright, protection of in colonies: 5 & 6 Vict.

c. 45; 10 & 11 Vict. c. 95; 49 & 50 Vict. c. 33, ss. 8, 9.

Courts of inquiry, colonial, as to shipping: 45 & 46 Vict. c. 76.

Customs, powers of Governors as to: 39 & 40 Vict. c. 36, s. 149.

Customs regulations: 16 & 17 Vict. c. 107, ss. 165, 166, 182, 183, 188, 327, 330, 331; 39 & 40 Vict. c. 36, ss. 151, 153, 161.

Docks, loans for construction of: 28 & 29 Vict. c. 106.

Enabling colonial legislatures to make enactments for trial and punishment of offences committed within a British possession, and causing death beyond such possession: 23 & 24 Vict. c. 122.

Evidence, admission of barbarous and uncivilised persons in colonial Courts: 6 & 7 Vict. c. 22.

Evidence, taking of in relation to civil and commercial matters pending before foreign tribunals: 19 & 20 Vict. c. 113 (s. 6 from "provided" to end repealed). Extended to non-political criminal matters, 33 & 34 Vict. c. 52, s. 24.

Evidence, proof of certain public documents and proceedings: 14 & 15 Vict. c. 99, ss. 7, 11; 31 & 32 Vict. c. 37; 45 & 46 Vict. c. 9.

Evidence, taking of for purposes of any court or tribunal in Her Majesty's dominions: 22 Vict. c. 20. Amended as to costs by 48 & 49 Vict. c. 74, s. 5.

Evidence, taking of in India and the colonies,

&c.: 1 Will. 4, c. 22 (ss. 3–5, 8–11, repealed); 48 & 49 Vict. c. 74.

Extradition: 33 & 34 Vict. c. 52, ss. 17, 18; 36 & 37 Vict. c. 60.

Foreign enlistment: 33 & 34 Vict. c. 90 (s. 31 repealed).

Foreign Jurisdiction: 53 & 54 Vict. c. 37.

Forged Transfers Act, 1891; application of to colonial stock: 54 & 55 Vict. c. 43, s. 5.

Fortifications transferred to Governors: 40 & 41 Vict. c. 23.

Fugitive offenders: 44 & 45 Vict. c. 69.

Governors, responsibility of in Great Britain for offences committed abroad: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Governors, prolonging duration of patents of after demise of the Crown: 1 Will. 4, c. 4, s. 2.

Governors, powers of as to passenger ships: 18 & 19 Vict. c. 119, ss. 52, 84, 97, 98.

Governors, retiring pensions to: 28 & 29 Vict. c. 113; 35 & 36 Vict. c. 29; 50 & 51 Vict. c. 13.

Governors, regulation by as to lime juice, &c., on board ships: 30 & 31 Vict. c. 124, s. 6.

Governors, regulations by as to terminable certificates of registry of certain ships: 31 & 32 Vict. c. 129, s. 1.

Governors, appointment by of surveyors of crew spaces: ibid. s. 3.

Governors, jurisdiction of as to readmission to British nationality: 33 & 34 Vict. c. 14, s. 8.

Governors, powers of under Extradition Acts: 33 & 34 Vict. c. 52, s. 17; 36 & 37 Vict. c. 60, s. 1.

Governors, powers of as to customs: 39 & 40 Vict. c. 36, s. 149.

Governors, leave of necessary for prosecution of unseaworthy ships in British possessions: 39 & 40 Vict. c. 80, s. 4.

Governors, transfer of fortifications to: 40 & 41 Vict. c. 23.

Governors, leave of necessary for institution of proceedings against persons not British subjects for offences under Territorial Waters Jurisdiction Act: 41 & 42 Vict. c. 73, ss. 3, 4.

Governors, duties of as to court-martial: 44 & 45 Vict. c. 58, s. 54, sub-ss. 4, 7, 9.

Governors, powers of as to attesting soldiers: ibid. s. 94, sub-s. 1.

Governors, duty of to arrange for reception of military prisoners: ibid. ss. 131, 132.

Governors, powers of to proclaim force in colony temporarily subject to Army Act: ibid. s. 89, sub-ss. 2, 3, 4.

Governors, powers of under Fugitive Offenders Act: 44 & 45 Vict. c. 69, ss. 3, 6.

Governors, powers of to approve ports of registry and appoint surveyors of British ships: 50 & 51 Vict. c. 62, s. 3.

Governors, powers of to appoint *ad interim* certain officials in Vice-Admiralty Courts: 53 & 54 Vict. c. 27, s. 9 (2*b*).

*Habeas corpus*, prohibition of issue of writ of to certain colonies: 25 Vict. c. 20.

Judicial Committee of the Privy Council, constitution of, &c: 3 & 4 Will. 4, c. 41; 6 & 7 Vict. c. 38; 7 & 8 Vict. c. 69; 14 & 15 Vict. c. 83; 20 & 21 Vict. c. 77, s. 115; 37 & 38 Vict. c. 35, sched. as to 3 & 4 Will. 4, c. 41; 39 & 40 Vict. c. 59, ss. 6, 14; 44 Vict. c. 3; 50 & 51 Vict. c. 70, s. 3. (See *ante*, p. 235, under principal enactment.)

Jurisdiction of colonial courts under Foreign Jurisdiction Act: 53 & 54 Vict. c. 37, s. 9.

Letters patent, time of taking effect of: 26 & 27 Vict. c. 76.

Lighthouses (colonial), erection and maintenance of: 18 & 19 Vict. c. 91, ss. 2–8.

Load-lines on ships registered in British possessions: 53 Vict. c. 9, s. 3.

Loans for construction of docks: 28 & 29 Vict. c. 106.

Mail Ships Act, 1891, application of to British possessions: 54 & 55 Vict. c. 31, s. 8.

Marriage laws (colonial), validity of: 28 & 29 Vict. c. 64.

Marriage of British subjects outside United Kingdom: 55 & 56 Vict. c. 23.

Medical practitioners: 21 & 22 Vict. c. 90, s. 46; 39 & 40 Vict. c. 48.

Merchant shipping. See Shipping.

Money orders: 46 & 47 Vict. c. 58, s. 4.

Naturalisation, power to legislate as to: 33 & 34

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Vict. c. 14, s. 16; declarations in colonies of alienage and of British nationality, ss. 3, 6 (2); readmission to British nationality, s. 8.

Naval defence: 28 & 29 Vict. c. 14.

Oaths, administration of: 52 Vict. c. 10.

Offences at sea, trial of: 46 Geo. 3, c. 54.

Offices in colonies: 22 Geo. 3, c. 75, ss. 2–4; 54 Geo. 3, c. 61 (s. 5 to "and that" repealed).

Officials, colonial, responsibility of in Great Britain for offences committed abroad in their offices: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Official Secrets: 52 & 53 Vict. c. 52.

Pardon of transported convicts: 6 & 7 Vict. c. 7.

Passenger Act, application of to colonial voyages: 18 & 19 Vict. c. 119, s. 95.

Passenger steamers, colonial certificates for: 39 & 40 Vict. c. 80, s. 17.

Patent, letters, time of taking effect of: 26 & 27 Vict. c. 76.

Patent, letters: 46 & 47 Vict. c. 57, ss. 103, 104.

Pensions, colonial service: 28 & 29 Vict. c. 113; 35 & 36 Vict. c. 29; 50 & 51 Vict. c. 13.

Posts and postage: 7 & 8 Vict. c. 49; 12 & 13 Vict. c. 66.

Prisoners, removal of from one colony to another for punishment: 32 Vict. c. 10; 47 & 48 Vict. c. 31.

Probates and letters of administration, colonial, recognition of in United Kingdom: 55 Vict. c. 6.

Probate of will issued in colony equivalent to

will for completing title to land in Scotland : 37 & 38 Vict. c. 94, s. 51.

Proof of colonial proceedings : 14 & 15 Vict. c. 99, ss. 7, 11.

Remission of sentence by Governor, protection of felons receiving in enjoyment of property acquired after conviction : 5 Geo. 4, c. 84, s. 26.

Repeal by colonial legislatures of certain parts of 54 Geo. 3, c. 15, and 5 & 6 Will. 4, c. 62 : 22 & 23 Vict. c. 12. S. 1 repealed.

Sale moneys of lands, appropriation of : 15 & 16 Vict. c. 39.

Scotland, land in, probate of will issued in colonies equivalent to will for completing title to : 37 & 38 Vict. c. 94, s. 51.

Sea, trial in colonies of offences committed at : 46 Geo. 3, c. 54.

Sentences of colonial courts, regulation of in certain cases : 37 & 38 Vict. c. 27.

Shipping, merchant (colonial) : 17 & 18 Vict. c. 104, ss. 17–24, 26–28, 30–33, 36, 37 (except sub-s. 2), 38–108, so much of Part III. as defined in ss. 109, 288–290, 514, 547 ; 32 & 33 Vict. c. 11 ; 46 & 47 Vict. c. 41 ; courts of inquiry, 45 & 46 Vict. c. 76 ; registration, 31 & 32 Vict. c. 129 ; load-lines, 53 Vict. c. 9, s. 3 ; *vide* 39 & 40 Vict. c. 36, sched. A.

Slavery, abolition of : 3 & 4 Will. 4, c. 73, s. 12 ; 6 & 7 Vict. c. 98, s. 2.

Slave compensation funds, reversion to public of certain : 35 & 36 Vict. c. 44, s. 25.

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Slave trade, suppression of: 5 Geo. 4, c. 113, ss. 2–8, 9, 12, 39, 40, 47; 6 & 7 Vict. c. 98; 36 & 37 Vict. c. 88.

Stamp duty, exemption from of certain instruments and contracts: 33 & 34 Vict. c. 97, sched. *sub fin.*

Stock, colonial: 40 & 41 Vict. c. 59, amended by 55 & 56 Vict. c. 35; 43 & 44 Vict. c. 20, s. 54.

Territorial Waters Jurisdiction Act: 41 & 42 Vict. c. 73.

Ticket of leave men, holding of property by: 6 & 7 Vict. c. 7 (preamble and ss. 1, 6, repealed).

Transportation, abolition of: 20 & 21 Vict. c. 3. Ss. 1, 7, 8, repealed.

Trial and punishment in colonies of persons charged with offences cognisable by British Courts sitting in foreign countries: 53 & 54 Vict. c. 37, s. 6.

Validity of colonial laws: 28 & 29 Vict. cc. 63, 64.

Witnesses, *mandamus* to colonial judge to examine: 1 Will. 4, c. 22. Ss. 3–5, 8–11, repealed.

## *Section* 3.

### *Imperial Statutes relating to particular Colonies.*

Sect. 3. Imperial Statutes relating to particular colonies.

AFRICA, COAST OF.—1 & 2 Geo. 4, c. 28: Possessions of African Co. vested in the Crown and annexed to Sierra Leone. Preamble, ss. 1 to "on

the said coast; and," 2, 3 to "this Act," 4, repealed.

21 & 22 Vict. c. 35: Confirming convention with the French as to Portendic and Albreda.

AFRICA, SOUTH.—26 & 27 Vict. c. 35: Prevention and punishment of offences by Her Majesty's subjects in parts of S. Africa not within jurisdiction of any civilised government. S. 6 repealed.

40 & 41 Vict. c. 47: Providing for a Union of the South African Colonies and States, and framing Constitution.

AFRICA, WEST.—1 & 2 Geo. 4, c. 28: Possessions of African Co. vested in the Crown and annexed to Sierra Leone. (Ss. 2, 4, repealed.)

16 & 17 Vict. c. 86: Rights of liberated Africans in Sierra Leone; to be deemed natural born subjects.

24 & 25 Vict. c. 31: Prevention and punishment of offences in territories adjacent to Sierra Leone.

34 Vict. c. 8: Extending jurisdiction of Courts to offences committed out of Her Majesty's dominions.

BASUTOLAND AND BRITISH BECHUANALAND.—52 & 53 Vict. c. 38: Validity of certain marriages solemnised in.

BRITISH KAFFRARIA.—28 & 29 Vict. c. 5: Union with Cape of Good Hope. Ss. 4–18, sched., repealed.

CAPE OF GOOD HOPE.—26 & 27 Vict. c. 35:

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Extending laws for punishment of crime to British subjects in parts of S. Africa not within jurisdiction of civilised government; appointment of magistrates in such territory. S. 6 repealed.

28 & 29 Vict. c. 5: Incorporation of British Kaffraria with. Ss. 4–18, sched., repealed.

40 & 41 Vict. c. 47, s. 58: Power to annex British possessions in S. Africa.

48 Vict. c. 7: Authorising advance by Commissioner of Her Majesty's Treasury to Government of Cape of Good Hope.

AMERICA, COLONIES IN.—25 Geo. 2, c. 6: Wills excepted from repeal in 1 Vict. c. 26, s. 2.

6 Geo. 3, c. 12: Authority of H. M. over.

AMERICA, NORTH, BRITISH POSSESSIONS IN.—39 & 40 Vict. c. 36, s. 150: Base coin not to be imported into.

AMERICA, NORTH-WESTERN TERRITORIES OF.—22 & 23 Vict. c. 26: Administration of justice; regulation of trade with Indians.

BRITISH COLUMBIA.—22 & 23 Vict. c. 26: Jurisdiction of Courts over offences committed in Indian territory.

29 & 30 Vict. c. 67: Union with Vancouver's Island. S. 9, sched., repealed.

33 & 34 Vict. c. 66: Government of.

55 & 56 Vict. c. 52: British Columbia Loan.

CANADA.—14 Geo. 3, c. 83[1]: Defining province

[1] *Donegani* v. *Donegani*, 3 Knapp, 63; *Migneault* v. *Malo*, L. R. 4 P. C. 123; *Reg.* v. *Randall Wixon*, 8 L. J. Q. B. 129.

of Quebec. Repealed as to ss. 3, 4, 6, 7, 11 (from "subject" to end), 12–17.

31 Geo. 3, c. 31, ss. 38–40, 43–45: Parsonages; grants of lands.

1 & 2 Geo. 4, c. 66: Trade with Indians; administration of justice in Indian territories. Ss. 1 to "passing of this Act," 3 to "passing of this Act," 4, 5, 6 to "passing of this Act," and 6–13 so far as relating to Vancouver's Island and British Columbia, repealed.

3 Geo. 4, c. 119, ss. 31 (from and after the words "declared that" and except the words "from and after the commencement of this Act"), 32: Tenure of lands.

6 Geo. 4, c. 59[1], s. 9 to the words "none other": Addition of parts of Labrador, &c., to Lower Canada.

6 Geo. 4, c. 75: Canada Co.

9 Geo. 4, c. 51: Canada Co.

3 & 4 Vict. c. 35, ss. 28, 29, 60: Qualification of members of Legislative Assembly of province of Canada; power to Her Majesty to annex Magdalen Islands to Prince Edward's Island.[2]

3 & 4 Vict. c. 78: Sale of clergy reserves. Ss. 1 to "this Act," 8 from "Lord High" to "Majesty's," and from "of the United" to "Ireland," 11, 13, repealed.

14 & 15 Vict. c. 63: Settling boundaries between Canada and New Brunswick.

[1] *Macdonald* v. *Lambe*, L. R. 1 P. C. 539.

[2] Order in Council under made 14 August, 1840.

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Imperial Statutes relating to particular colonies.

15 & 16 Vict. c. 53 : Bishopric of Quebec.

16 & 17 Vict. c. 21 : Clergy reserves.

19 & 20 Vict. c. 23 : Canada Co.

20 & 21 Vict. c. 34 : Boundaries between Canada and New Brunswick.

22 & 23 Vict. c. 26 : Regulations of trade with Indians : administration of justice.

30 & 31 Vict. c. 3[1] (British N. America Act) : Union of Canada, Nova Scotia, and New Brunswick, and government thereof. Amended by 34 & 35 Vict. c. 28 ; 38 & 39 Vict. c. 38 ; 49 & 50 Vict. c. 35.

30 & 31 Vict. c. 16 : Guarantee of international railway loan.

31 & 32 Vict. c. 105 : Rupert's Land ; surrender of lands by Hudson's Bay Co.

32 & 33 Vict. c. 11, s. 7 : Canada to be one

[1] *Ss.* 65, 92 (*sub-ss.* 2, 14): *A.-G. for Quebec* v. *Reed*, L. R. 10 App. 141. *Ss.* 91, 92: *L'Union S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31; *Cushing* v. *Dupuy*, L. R. 5 App. 409 ; *Citizens Insurance Co. of Canada* v. *Parsons*, *Queen Insurance Co.* v. *Same*, L. R. 7 App. 96 ; *Russell* v. *Reg.*, L. R. 7 App. 829 ; *Hodge* v. *Reg.*, L. R. 9 App. 117 ; *Colonial Building and Investment Association* v. *A.-G. of Quebec*, L. R. 9 App. 157 ; *Bank of Toronto* v. *Lambe*, L. R. 12 App. 575. *S.* 92: *Dow* v. *Black*, L. R. 6 P. C. 272 ; *A.-G. for Quebec* v. *Queen Insurance Co.*, L. R. 3 App. 1090 ; *Valin* v. *Langlois*, L. R. 5 App. 115. *Ss.* 91, 92, 129: *Dobie* v. *Temporalities Board*, L. R. 7 App. 136. *S.* 93: *Cf. City of Winnipeg* v. *Barrett*, L. R. (1892) A. C. 445. *Ss.* 102, 109: *A.-G. of Ontario* v. *Mercer*, L. R. 8 App. 767. *S.* 108: *Western Counties Railway Co.* v. *Windsor and Annapolis Railway Co.*, L. R. 7 App. 178. *S.* 109 : *S. Catherine's Milling and Lumber Co.* v. *Reg.*, L. R. 14 App. 46 ; *A.-G. of British Columbia* v. *A.-G. of Canada*, L. R. 14 App. 295. *Ss.* 109, 126: *Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.

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32 & 33 Vict. c. 101 : Guarantee of loan for payment to Hudson's Bay Co. for Rupert's Land.

34 Vict. c. 28 : Establishing new provinces : altering boundaries of provinces; legislation for territories and provinces.[1] Amended by 49 & 50 Vict. c. 35.

35 & 36 Vict. c. 45[2]: Treaty of Washington (Fisheries); suspension of Acts at variance with.

36 & 37 Vict. c. 45 : Guarantee of loan for Pacific railway and canals. Section 9 repealed.

37 & 38 Vict. c. 26 : Canadian stock, stamps. S. 4 amended by 43 & 44 Vict. c. 20, s. 54 ; 45 & 46 Vict. c. 72, s. 17.

38 & 39 Vict. c. 38 : Parliament of Canada.

38 & 39 Vict. c. 53 : Canada Copyright Act, Act giving effect to, &c.

49 Vict. c. 13 : Transferring lighthouses at Cape Race to Dominion of Canada.

49 & 50 Vict. c. 35 : Representation in Parliament of Canada of territories in the Dominion but not included in any province.

52 & 53 Vict. c. 28 : Ontario boundaries.

NEW BRUNSWICK.—14 & 15 Vict. c. 63 ; 20 & 21 Vict. c. 34 ; 30 & 31 Vict. c. 3 ; 38 & 39 Vict. c. 38. See CANADA.

[1] *Riel* v. *Reg.*, L. R. 10 App. 675.

[2] *Direct U. S. Cable Co.* v. *Anglo-American Telegraph Co.*, L. R. 2 App. 394.

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NEWFOUNDLAND.—59 Geo. 3, c. 38 : Fisheries off.

5 Geo. 4, c. 67 ; Administration of justice. Repealed as to coast of Labrador by 6 Geo. 4, c. 59, s. 9 ; and as to ss. 11, 18, 19, 21 (from "that of Governor" to "instead under this Act"), 23-34, 36, by 36 & 37 Vict. c. 91. Verbal amendments in, 53 & 54 Vict. c. 33.

5 Geo. 4, c. 68, s. 1, from "provided always" to end of section : Marriages in.

2 & 3 Will. 4, c. 78, s. 1 : Continuation of Acts and appropriation of duties.

5 & 6 Vict. c. 120 : Amending Constitution. Ss. 1 to "of the same that," 5, 6, 8-11, repealed.

12 & 13 Vict. c. 21 : Rebuilding S. John's.

NOVA SCOTIA.—30 & 31 Vict. c. 3 : See CANADA.

PRINCE EDWARD'S ISLAND.—3 & 4 Vict. c. 35, s. 60 (from and after the words "enacted that") : Union of Magdalen Islands with.

VANCOUVER'S ISLAND.—12 & 13 Vict. c. 48 : Administration of justice in. Ss. 2, 5 repealed. Verbal amendments in, 54 & 55 Vict. c. 67.

29 & 30 Vict. c. 67 : Union with British Columbia. S. 9, sched., repealed.

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48 & 49 Vict. c. 60 : To constitute a Federal Council for Australasia.

51 & 52 Vict. c. 32 : Imperial Defence ; ratifying

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AUSTRALIAN COLONIES.—5 Geo. 4, c. 86: Australian Agricultural Co.

11 Geo. 4 and 1 Will. 4, c. 24: Ditto.

18 & 19 Vict. c. 56: Disposal of waste lands.

24 & 25 Vict. c. 44: Determining boundaries; New South Wales, Queensland, South Australia, ss. 1, 2; any contiguous colonies, s. 5; apportionment of public debt, s. 6.

35 & 36 Vict. c. 19[1]: 38 & 39 Vict. c. 51 (ss. 6, 11, so far as authorising H. M. to confer Admiralty jurisdiction, repealed): Pacific Islanders Protection Acts, 1872 and 1875.[2]

36 & 37 Vict. c. 22: Power to Legislatures to regulate customs duties.

NEW SOUTH WALES.—3 & 4 Vict. c. 62: Power to Her Majesty to erect new colonies out of islands comprised within and being dependencies of. Ss. 1, 4, repealed.

12 & 13 Vict. c. 22: Validity of grants of lands.

18 & 19 Vict. c. 54[3]: Conferring constitution; providing for erection of separate colonies out of. Part of s. 7 repealed by s. 4 of

[1] *Burns* v. *Nowell*, L. R. 5 Q. B. D. 444; *Australian Insurance Co.* v. *Jackson*, 33 L. T., N. S., 286.

[2] These Acts define "Australian Colonies" to mean and include New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia and Fiji; see ss. 2, 8 of the respective Acts. *McArthur & Co.* v. *Cornwall*, L. R. (1892) A. C. 75.

[3] *Powell* v. *Apollo Candle Co.*, L. R. 10 App. 282; *Barton* v. *Taylor*, L. R. 11 App. 197; *Harris* v. *Davies*, L. R. 10 App. 279.

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29 & 30 Vict. c. 74, s. 2: Confirming laws as to duties of customs.

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VAN DIEMEN'S LAND (TASMANIA).—6 Geo. 4, c. 39: Van Diemen's Land Co.

9 Geo. 4, c. 83, ss. 1–8, 10–19: Courts of Judicature; s. 24[1]: Laws of England at time of passing Act to prevail in colony; ss. 34–37: Escape of felons, binding artificers.

10 & 11 Vict. c. 57: Granting land to Van Diemen's Land Co.

13 & 14 Vict. c. 59: Constitution of; s. 32, power to colony to alter.

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[1] *Astley* v. *Fisher*, 6 C. B. 572; *Devine* v. *Holloway*, 14 Moo. P. C. C. 290; *Harris* v. *Davies*, L. R. 10 App. 279.

29 & 30 Vict. c. 74, s. 2: Confirming laws as to customs.

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25 & 26 Vict. c. 11: Validity of Acts altering constitution.

29 & 30 Vict. c. 74. s. 2: Confirming laws as to customs.

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25 & 26 Vict. c. 11: Validity of Acts altering constitution.

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NEW ZEALAND.—11 & 12 Vict. c. 5 (ss. 8, 9, repealed): Government of. But see

15 & 16 Vict. c. 72: Granting representative constitution; repealing the previous Acts so far as repugnant to it. Amended by 20 & 21 Vict. c. 53; 25 & 26 Vict. c. 48; 31 & 32 Vict. c. 57.

10 & 11 Vict. c. 112, s. 19: New Zealand Co., may relinquish undertaking.

12 & 13 Vict. c. 79: New Zealand Co., execution of conveyances, &c., by or on behalf of.

13 & 14 Vict. c. 70: Canterbury Association.

14 & 15 Vict. c. 84: Ditto.

[1] *Speaker of Legislative Assembly of Victoria* v. *Glass*, L. R. 3 P. C. 560.

14 & 15 Vict. c. 86: Management of settlements by New Zealand Co.

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25 & 26 Vict. c. 48 (ss. 1, 6, repealed); 31 & 32 Vict. cc. 57, 92, 93: Government of.

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31 & 32 Vict. c. 57: Appointment of members of Legislative Council.

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33 & 34 Vict. c. 40 (s. 3, last paragraph repealed): Public loans (Roads). Amended by 36 & 37 Vict. c. 15.

FIJI.—41 & 42 Vict. c. 61: Validating marriages in before erection into a colony.

CEYLON.—16 & 17 Vict. c. 84, s. 2: Regulations as to number of Asiatic and African passengers on ships.

32 & 33 Vict. c. 77; 35 & 36 Vict. c. 55 (s. 8

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HONDURAS, BRITISH.—44 & 45 Vict. c. 36: Court of Appeal for; Supreme Court of Jamaica to constitute.

HONG KONG.—6 & 7 Vict. c. 80: Government of Her Majesty's subjects in China (repealed by 41 & 42 Vict. c. 67, repeal repealed by 46 & 47 Vict. c. 39); 18 & 19 Vict. c. 104: Powers of Legislature as to Chinese passenger ships.

22 & 23 Vict. c. 9: Providing for exercise of duties of Chief Superintendent in China during absence or vacancy of the office.

LABUAN.—29 & 30 Vict. c. 115: Separation from India; government of.

HELIGOLAND.—53 & 54 Vict. c. 32: Cession of to German Emperor.

MALTA.—41 Geo. 3, c. 103, s. 3; 39 & 40 Vict. c. 36, s. 164: To be deemed part of Europe.

MAURITIUS.—11 & 12 Vict. c. 130: Loan guarantee.

39 & 40 Vict. c. 36, s. 150: Prohibition of importation of base coin into.

55 & 56 Vict. c. 49: Mauritius Hurricane Loan.

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39 Vict. c. 51 (ss. 6, 11, so far as authorising H. M. to confer Admiralty jurisdiction, repealed): Pacific Islanders' protection.[1]

S. HELENA.—3 & 4 Will. 4, c. 85, s. 112: Vesting island and government in Crown.

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29 & 30 Vict. c. 115: Separation from India; government of.

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32 & 33 Vict. c. 88: Separation from diocese of Calcutta.

37 & 38 Vict. c. 38: Apprehension and trial of offenders for offences committed in Malay Peninsula, &c.

WEST INDIA ISLANDS.—1 & 2 Vict. c. 67 (s. 1 to "same that," 11, repealed): Regulation of prisons in.

32 & 33 Vict. c. 69: Loan guarantee.

17 & 18 Vict. c. 117; 21 & 22 Vict. c. 96 (ss. 3 and 5 repealed): 25 & 26 Vict. c. 45; 27 & 28 Vict. c. 108; 35 & 36 Vict. c. 9 (s. 3 repealed): Commissioners for sale of incumbered estates in. These Acts are repealed prospectively by

49 & 50 Vict. c. 36: To provide for determination of Acts respecting sale and transfer of incumbered estates in West Indies.

[1] *Bonus* v. *Newell*, 5 Q. B. D. 444; *Australasian Insurance Co.* v. *Jackson*, 38 L. T., N. S., 286.

31 & 32 Vict. c. 120 : Relief of consolidated fund from salaries of bishops and clergy in. S. 1 repealed from "and all the powers" to "hereby repealed."

42 & 43 Vict. c. 16 : Remission of irrecoverable balances due from private persons in; powers of Relief Commissioners transferred to Public Works Loan Commissioners; unclaimed sums in Commissioners' hands.

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BARBADOS.—5 & 6 Vict. c. 4, s. 1 : Increasing bishoprics and archdeaconries.

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25 & 26 Vict. c. 55 : Commutation of debt.

26 & 27 Vict. c. 31 : Government of Cayman Islands.

29 & 30 Vict. c. 12 : Altering government of.

32 & 33 Vict. c. 69 : Guarantee of loans.

36 & 37 Vict. c. 6 : Annexation of Turks and Caicos Islands to.

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## DECIDED IN THE PRIVY COUNCIL

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# A TOPICAL INDEX OF CASES

## DECIDED IN THE PRIVY COUNCIL ON APPEAL

FROM THE

## COLONIES, CHANNEL ISLANDS, AND ISLE OF MAN.

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9. Slave Trade Acts—Seizure of ship under 5 Geo. 4, c. 113—Restoration of by Court below without damages and costs—Rule of evidence in 5 & 6 Will. 4, c. 60—Application of not admitted.

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10. Slave Trade Acts—Seizure of Portuguese ship in harbour—Obligation of seizor to justify acts—Absence of reasonable ground of suspicion—*Primâ facie* evidence of slave-trading—Treaty with Portuguese—6 & 7 Vict. c. 53.

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5. Bank Incorporating Acts—Construction—Foreclosure of mortgage.

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6. Bank—Transmission of credit to branch—Acceptance by branch—Effect of—Position of branch banks, what.

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7. Banker and customer—Fraudulent detention of money by customer's cashier—Consequent unauthorised overdraft unknown to customer—Liability of customer.

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12. Commissioner of Crown Lands, office of, created by New South Wales Act, 4 Will. 4, No. 110—Tenure *durante bene placito*—No appeal to Queen in Council from order of amotion by Governor-General and Executive Council—22 Geo. 3, c. 75, applicable only to offices held by patent for life or term—No jurisdiction in Judicial Committee to consider dismissal of public servant by Governor-General of colony from office held during pleasure unless on express reference by Crown—Order for leave to appeal granted on report of Judicial Committee, without prejudice to respondent's right to show cause—Cause shown on counter-petition—Order rescinded.

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20. Crown grants of land—Right to resume—Rule against perpetuities inapplicable to Crown grants in colony.

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21. Crown lands, grants of—Imperfect description—Possession by grantee for more than 30 years—Payment of quit-rent—Handwriting of deceased witness made at time of examination by Commissioners but not returned with depositions—Admissibility for comparison to prove signature of deed—Burden of proof of signature—Letter not in evidence not admissible as evidence of handwriting.

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22. Crown Lands Alienation Act, 1861 (25 Vict. No. 1), ss. 13, 16, 18, 21—Conditional purchase in name of infant by strangers—Non-compliance with conditions of Act.

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23. Crown Lands Alienation Act, 1861, s. 13—Lands forfeited to Crown—Conditional sale of.

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24. Crown lands—Grants to minors—Alienation Act, 1861, s. 13—"Any person" not necessarily above 21.

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28. Crown lands—Conditional purchase of—Forfeiture—Validity of re-grant of by Crown—Crown Lands Act, 1884, c. 4, s. 21, sub-s. 3.
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29. Crown leases—Registration of title *pendente lite*—Effect of regulations under statute—Crown lands, distribution of.
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31. Debt—Attribute of locality possessed by—Simple contract debt localised where debtor resides—Specialty debt where specialty at death of creditor—Simple contract debt merged in specialty debt—Ground of liability to probate duty of an asset under Stamp Duties Acts.
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33. Debtor and creditor—Agreement to advance moneys—Sugars to be placed in lender's hands for sale on commission—Advances to be repaid out of proceeds—Insolvency of borrower—Assignment to trustees for benefit of creditors—Sugars purchased by agents of borrower—No lien on sugars for lender.
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34. Dedication of land to public purposes by the Crown—Presumption from user—Crown Lands Alienation Act, 1861, ss. 3, 5—5 & 6 Vict. c. 36.
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46. Legislation—9 Geo. 4, c. 83—Appointment of Legislative Assembly for New South Wales—Authority of Governor with their concurrence to make laws and ordinances not repugnant to laws of England—Act of New South Wales, 8 Will. 4, No. 3—Introduction of Statute of Limitations, 3 & 4 Will. 4, c. 27, into New South Wales—Demise of Crown—Effect of on authority of Governor and legislative Assembly.

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48. Legislature, powers of—11 Vict. No. 13, s. 1—Costs of action of slander.
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51. Limitation Act, No. 3 of 1837—Cessation of to run against lawful owner on intruder relinquishing possession.
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52. Marine insurance—Open policy—Declaration of goods by insured, incidence of to every such contract—Contracts of marine insurance to be made in writing (*semble*).
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54. Mortgage of branded sheep and cattle on run—Sheep afterwards brought on run not included.
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57. Mortgage—Foreclosure—Bank Incorporating Acts.

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58. Mortgage—Proviso of redemption, construction of—Reconveyance to be of mortgagors' original estates.

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59. Mortgage, setting aside equitable—Act of New South Wales, 12 Vict. No. 1—Colonial Act, 5 Vict. c. 17, s. 8—Insolvency of mortgagor—Strict proof—Costs of appeal to abide ultimate result of proceedings on remit.

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60. Mortgagee, assignee of—Rights of—Right of mortgagor to reconveyance—Promissory notes as collateral security—Severance of debt from security.

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61. Municipal institutions, establishment of in New South Wales—Colonial Act, 22 Vict. No. 13, ss. 1, 2—Petition to Governor to proclaim municipality—Proclamation describing district differently, incorporating other lands—Validity of.

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62. Municipalities Act, 1867, s. 153—Bye-law under for regulating interment of dead—Prohibition by of interments in particular cemetery—Validity of—Unreasonableness, setting aside bye-laws for.

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63. New trial—Principles on which granted by Appeal Court—Verdict against Judge's opinion—Costs of rule—Costs of appeal.

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64. Partnership—Purchase of share in—Agreement as to land forming partnership property—Paying off mortgage during negotiations—Failure of partnership—Sale of land—Right to account of sale money—Rate of interest.

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65. Petition of Right—Petition to Governor—Reference by to Supreme Court—Nature of action on reference—20 Vict. No. 15[1]—Invalidity of contract for reason not apparent on face of declaration

[1] Cp. *Re Holmes*, 2 Johns. & H. 527.

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67. Pleading—Assault—Criminal information by Attorney-General against member of Legislative Assembly—Within precincts of House—Contempt of Assembly—Surplusage.

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68. Principal and agent—Authority of bank manager to prosecute to be proved, not presumed—Liability of bank for malicious prosecution by manager—Appealable sum includes interest adjudged on verdict.

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69. Principal and agent—Liability for engagements on account of business—Assignment of property by agents in discharge of business debts—Pleading—Technical rules not to prevent justice being done—Insolvency of party to the suit—Interest in own right and also as trustee—Prosecution of appeal as trustee—Leave to appeal granted on petition, though no provision for appeal in Charter of Justice or Act of Parliament creating the Court.

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70. Principal and surety—Suretyship entered into on faith of mortgage by principal debtor to creditor—Sale of part of mortgaged property—Non-payment of price by purchaser—Consent of mortgagee—Due course of management—Effect on sureties' liability.

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71. Real estate of Intestates Distribution Act, 1862 (New South Wales)—Introduction by of new rule of succession to real estate—Rule applicable to all cases, not confined to those where dead owner has actually left an heir.

*Wentworth* v. *Humphrey*, L. R. 11 App. 619.

72. Scots church—Land granted to minister by colonial government—Synod—Dismissal of minister—Refusal to recognise synod's authority—Suits to remove ministers and other trustees from trust—Interest to maintain suit—Public authority—Lapse of time—Acquiescence—Colonial synod's authority.

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4. Crown Lands Alienation Act, 1868, ss. 45, 51, 57—Grant in fee refused—False declaration by applicant for lease.
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4. Crown Lands Alienation Act, 1868, ss. 51 (sub-s. 5), 55—Residence—Abandonment—Forfeiture—Judicial inquiry by Commissioners.
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5. Goldfields Act, 29 Vict. c. 29—Rules of 1866—Ordinary quartz claim—Ownership of claim and incidents thereof—Discoveries of claim in "new locality."
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6. Goldfields Act, 1874, ss. 9, 11—Holder of miners' rights—Rights of Crown lessees—Interference by former with latter.
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3. Bill of exchange—Insolvency of acceptor in Australia—Right to re-exchange of holder in England.
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4. Insolvent Act of 1860, Division VI.—Assignee in bankruptcy—Transfer of shares—Option of assignee to accept or reject shares—Liability of transferor.
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8. Land, interest in—Equitable right in passed by unregistered deed—Certificate of title obtained by fraud—Act 22 of 1861, s. 39.
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10. Leases by Governor—Not records—Cannot be quashed by *sci. fa.*—21 Vict. No. 5, s. 13—Nature of *sci. fa.*—Not issuable out of Supreme Court in S. Australia—Proper remedy information in Chancery or writ of intrusion—*Reg.* v. *Clarke* commented on.
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12. Statute—Construction of—Act No. 4 of 1855-6—Security for loan—Banking Co.—Charter—Principal and agent—Preferential lien on wool—Trover.
   *Ayers* v. *S. Australian Banking Co.*, L. R. 3 P. C. 548.
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13. Criminal cases—No leave to appeal where no substantial and grave injustice suggested.
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14. Equity of redemption—Suit to set aside release of by official assignee of mortgagor—Misrepresentation—*Onus probandi*—Reconveyance to mortgagor—Re-leasor and re-leasee of equity of redemption, footing of.
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17. Fraud, contracts obtained by—Voidable, not void.
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18. Insolvency statute of Victoria, 1865, s. 27—Official assignee, powers of—Release of equity of redemption to mortgagee—Corporation bound by agreement not under seal acted upon.
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19. Insolvency—Joint debt—Separate security—5 Vict. No. 17.
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20. Joint Stock Company—Agreement by majority of shareholders—Power to bind dissenting shareholders.
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21. Jury *de medietate linguæ*—Right of challenge.
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22. Land—54 Geo. 3, c. 15, s. 4—Real estates liable for simple contract debts—Liability enforced against owner of the property—Executor—*Fi. fa.* against—Sheriff cannot sell testator's land—Colonial Registration Act, 5 Vict. No. 21, s. 11—Priority—Valuable consideration.
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23. Land Acts—Land Act, 1869, s. 98—Certificate of Board of Land and Works.
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24. Land Acts—Crown remedies and liability Statute, 1865—Forfeiture of lease—Waiver—Land Act of 1862, ss. 11, 21, 22, 23,

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**24. Land Acts—Land Act, 1865, s. 7—Land Act, 1869, ss. 98, 101—Contract with Her Majesty.**

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**25. Land Acts—Notice of forfeiture—Land Act, 1869, s. 161.**

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**26. Land, forged transfer of—Fictitious transferee—Forged mortgage—Registration, effect of—Existence and identity of owner, authority of agent, validity of deed, must be ascertained by mortgagee—Transfer of Land Statute, 1866, No. 391.**

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**27. Lands—Colonial Acts, 24 Vict. No. 117, 25 Vict. No. 145—Construction—Sale and occupation of Crown lands—Licence to occupy for year, subject to right of Crown to sell or proclaim without compensation—Tenancy from year to year—Indefeasible title of Crown.**

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**28. Lands Compensation Statute, 1869, No. 344, s. 35—Land compulsorily taken—Damage to adjoining lands—Enhancement in value of—Set-off.**

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29. Land Tax Act, 1877, s. 4, sub-s. 3—*Bonâ fide* transfer for valuable consideration without secret understanding or trust necessary.

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30. Lands, transfer of—Statute—Registration of purchase from judgment debtor—*Alias* writ of *fi. fa.*

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31. Lands—Waste lands—Grant by Crown—5 & 6 Vict. c. 36—Rights of Crown in gold and silver found under the soil.

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32. Legislative Council and Assembly—Power to commit for contempt—Statutory assumption of rights and privileges of English House of Commons.

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33. Legislature—Breach of privilege—18 & 19 Vict. c. 55—Colonial Act, 20 Vict. No. 1.—Power to commit for contempt by general warrant—Special leave to appeal—Question of public interest

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34. Married woman—Settlement for separate use for life, remainder as she should by deed or will appoint, in default of appointment remainder to executors or administrators—Debts of—Banker's lien—Fraud charged, failure to prove, effect of—*Johnson* v. *Gallagher*, 3 De G. F. & J. 494, approved.

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35. Master in Equity—Claim of probate duty—*Mandamus*—Construction of will—Vested interest—Act No. 388, s. 24.

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36. Melbourne Harbour Trust Act, s. 46—Notice of action—"Person," meaning of—Division of Act into headings, effect of.

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37. Mining rights—Occupation under Crown lease—Evidence of abandonment—Court of mines, constitution and powers of—Mining Act, 1865, No. 291, s. 193.

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38. Mortgage of station and stock thereon to secure amount of acceptance and renewals thereof—Liberty to mortgagee to make payments in respect of station, run, or stock, and charge to run, stock, &c.—Discounts on renewal of bills, whether secured by mortgage—Payments for government rent due, and scab licences for sheep—Payments for sheepwash.

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39. Mortgagor and mortgagee—Decree for redemption where bill impeached mortgage and did not pray to redeem—Liability of mortgagee in possession — Costs — Registration — Victoria Transfer of Land Statute, ss. 83-85, 87.

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40. Mortgagor and mortgagee—Equitable deposit of deeds—Remedies of mortgagor—Detinue—Redemption.

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41. Mortgagor and mortgagee—Insolvency of mortgagor—Release of equity of redemption by mortgagor's assignee to mortgagee—Subsequent conveyance by assignee of his interest to mort-

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42. Negligence — Carriage accident — Gratuitous service — *Scott* v. *London Docks Co.* distinguished.

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43. Negligence—Nervous shock resulting from fright of apprehended accident—Damages too remote.

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44. Partnership—Adoption of old firm's liabilities by new firm—Acceptance of new firm's liabilities—Discharge of old firm, 5 Vict. No. 17, s. 39—Deducting value of security from debt—Joint and separate estate of insolvent—English law of bankruptcy as to.

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45. Penal servitude—Colonial Court—Admiralty Jurisdiction, 12 & 13 Vict. c. 96—*Habeas corpus*, 16 & 17 Vict. c. 99, s. 6—Abolition of transportation, 20 & 21 Vict. c. 3—Applicability to colonies—Combined effect of Imperial and Colonial legislation.

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46. Petition of Right—Actions in nature of, 28 Vict. No. 241—Judgments against Crown—Appealable value—Leave to appeal upon terms—Leave given by Judicial Committee without terms—Appeals consolidated.

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47. Probate duty—Personal estate of testator locally situated outside testator's domicile—*Lex domicilii*, succession and enjoyment governed by—*Lex loci*, legal representation, collection, and administration as distinguished from distribution, governed by—Victorian Act, No. 388 of 1870, s. 2, sub-s. 7—Statement of accounts.

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48. Rateability — Exemption of Crown property — Victoria Local Government Act, 1874, s. 253—Race-course—Victoria Racing Club Act, 1871—Exemption of race-course.

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49. Sale, avoidance of—Purchase of testator's estate by executor who has not proved.
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50. Sale of goods—Insolvency of purchasers—Unpaid vendor—Lien of—Constructive delivery.
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51. Sale of land—Action for specific performance of contract for—Proviso for annulment if vendor unwilling or unable to remove any objection to title—Conditional offer by purchaser to give time for removal of objection—Vendor objecting in good faith to conditions—Threat of litigation against—Vendor entitled to rescind contract.
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52. State schools, teaching in—Classifiers of, powers of—Junior assistant—Assistant teacher—Public Service Act, 1883, s. 49.
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53. Stoppage *in transitu*—Carrier purchaser's agent—Duration of *transitus*—Right of vendor to stop.
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54. Succession duty—Victoria Act, No. 388 of 1870, ss. 7, 8, 10.
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55. Surety, action against—Balance of purchase-money of station sold by plaintiff to defendant's principal—Award of compensation to principal in abatement of price—Pleading—Principal not necessary party.
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56. Trade—Agreements in restraint of—Reasonableness—Arbitration clause—Award not condition precedent to right of action.
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57. Vice-Admiralty jurisdiction—Suit by seamen for wages and compensation—Limit of number of plaintiffs—Minimum of amount at issue—Section 15 of Order in Council in pursuance of 2 Will. 4, c. 51—Merchant Shipping Act, 1854, s. 189.
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58. Will—Devise to trustees—Power to devise without fine or premiums—Power to appoint new trustees—Appointment of sole trustee—Conveyance of devised lands—Lease by sole trustee—Payment of rent in advance—Notice of will to lessee—Setting aside lease.
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## [illegible]

1. [illegible]

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2. [illegible]

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5. Mortgagor and mortgagee— Settled account re-opened—Compound interest charged by mistake—Mutual mistake of law.

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8. Salvage—Towage service to ship in no danger—Arrest of ship in unsuccessful suit—No claim for demurrage or detention.

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9. Waste lands—Authority of Governor to grant—Ordinance of Sess. 1, No. 2, of 1841—Excess in grant.

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10. Waste lands—Goldfields Act, 1866, s. 16—Cancelling lease on discovery of gold.

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11. Waste lands—Southland Act, 1865—Statutory contract—Date when price fixed—Application for grant—Making of grant.

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12. Waste lands—Southland Acts, 1865, 1867—Construction—Rights of purchase—Jurisdiction of Commissioners.

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13. Will—Construction of—Amendment of probate refused—No distinction between testator's and draughtsman's words—"From and after the decease of my wife"—Time of vesting—Portion of will introduced through fraud or inadvertence—Effect of.

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3. Appeal, special leave to—Petition refused where issue of fact only involved—Essentials of such petition.

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4. Appeal, special leave to—Special agreement to submit to Court sanctioned by Court below—Powers of Court defined and restricted by agreement—Leave refused.

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7. Appeal, right of—Civil Code of Lower Canada, art. 2274—Consolidated Statutes of Lower Canada, c. 87, s. 12—Code of Civil Procedure of Lower Canada, arts. 766, 1178, 1360—Special leave to appeal—Importance of question at issue.

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8. Appropriation of payments—Rescission of by consent of all parties—Pleadings—Civil Code.

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10. Attorney acting as such in own case—Costs on judgment in his favour—Old French law.

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11. Bankrupt—Canadian Ordinance, 2 Vict. c. 36, s. 5—Debts provable—Interest of bankrupt—Admission of evidence of—Verbal agreement qualifying written contract.

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12. Barrister—Rights and remedies of by law of Quebec—*Quantum meruit*—Canada Petition of Right Act, 1876, s. 19, sub-s. 3.

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13. Bill of exchange—Agreement between holder and drawer—Cheque given by holder for acceptor to meet bill and accept new one—Payment by acceptor of first bill with cheque—Refusal to accept new bill—Agreement between holder and drawer no release to acceptor.

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14. Bill of lading, construction of—*Lex loci contractus*—Shipper, liability of.

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18. *Certiorari* from Supreme Court to Queen's Bench—No appeal—Consolidated Statutes, ch. 88, s. 17; ch. 77, s. 23.
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21. **Compensation**—Alimentary allowance—No distinction between law and equity—*Rapport* or return.
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23. **Compensation** for death—Measure of damages—Policy of insurance on life of deceased, amount of, not deducted—Revised Statutes of Ontario, c. 135, ss. 2, 3.
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24. **Construction** of writing—Peculiar sense of term—Evidence—"Premises"—Fire insurance on ship—Condition as to gunpowder "on premises."
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27. Criminal cases, appeal in—Validity of 43 Vict. c. 25 (Canada).
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28. Crown and Provinces, relation between—Not severed by British North America Act, 1867—Property and revenues reserved to province by ss. 109, 126 vested in Her Majesty—Winding up of bank—Priority of Provincial Government over other simple contract creditors—Prerogative of Crown.
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29. Crown, prerogative of to admit appeals—Power of Dominion and Provincial legislatures—British North America Act, 1867, ss. 91, 92—Canadian Act, 40 Vict. c. 41, s. 28—"Final"—Delivery necessary to pass property—Civil Code, art. 1472.
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30. Crown, rights of in Lower Canada—Priority of payment in respect of the Crown's "*Comptables*"—Sect. 1994 of Civil Code—Sect. 611 of Civil Procedure Code—Conflict between the Codes—Construction.
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31. Debentures issued by trustees of Quebec turnpike roads—Ordinance 4 Vict. c. 17—Canadian Act, 16 Vict. c. 235—Non-liability of province of Canada.
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34. Donations—Revocability of gifts *pur la survenance d'enfants du donateur*—Ordinance of 1731—French law previously existing in Canada unaffected.
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35. Elections—Quebec Controverted Elections Act, 1875—Judgment awarding election—Royal prerogative as to admitting appeal.

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36. Election petitions—British North America Act, 1867, s. 92, sub-s. 14—Controverted Elections Act, 1874, Canada Statute, 37 Vict. c. 9—Distribution of legislative power—Jurisdiction of Supreme Court—Special leave to appeal refused because no substantial question, nor doubt of correctness of decisions, nor apprehension of difficulty or disturbance from decisions.

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37. Escheats—Rights of Province to—British North America Act, 1867, ss. 102, 109.

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38. Evidence—Canadian Act. 25 Geo. 3, c. 2, regulating proceedings in courts of justice—Proof of facts concerning commercial matters to be governed by English law—Old French revoked—Statute of Frauds—Parol contract.

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39. Evidence—Notary public—French law in Lower Canada—English law in Upper Canada.

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40. Expropriation—Apportionment of indemnity—27 & 28 Vict. c. 60 (Canada)—29 & 30 Vict. c. 56 (Canada), s. 12.

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41. Expropriation—Closing one end of street—Interference with rights of owners of houses adjoining—Action of indemnity—Compensation—Civil Code, art. 407—Canadian Act. 27 & 28 Vict. c. 60.

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42. Expropriation—Report of Commissioners of not final—Canadian Act, 27 & 28 Vict. c. 60—35 Vict. c. 32, s. 7 (Quebec Statutes)—Action to augment indemnity—Burden of proof.

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43. Expropriation—Report of Commissioners of—Canadian Act, 27 & 28 Vict. c. 60—Order to remove by Supreme Court—Right of appeal to Queen's Bench—Code of Civil Procedure, art. 1115.

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44. Felony—Depositions on oath before trial—Admissibility against deponent on criminal charge—Answers compelled—New trial—

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45. Feudal tenures in Lower Canada—Feudal rights of seigneur extinguished in lands acquired by the Crown—Indemnity payable to the seigneur.

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46. Fire insurance—Destruction of church by fire—Transfer to insurers of right to sue and claim for damage—Subrogation of debt—French law.

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47. Fire insurance—Steamer—Warranty to navigate—Destruction in dock—Form and practice of colonial Courts—Indisposition to interfere with—Motion for verdict *non obstante.*

*Grant* v. *Ætna Insurance Co.*, 15 Moo. P. C. C. 516.

48. Fire insurance on ship—Insurance subject to conditions in policy so far as applicable—Conditions primarily intended to apply to insurance of houses and buildings—Proviso against more than twenty pounds of gunpowder being on "premises" at time of loss—Proviso held applicable.

*Beacon Life and Fire Assurance Co.* v. *Gibb*, 1 Moo. P. C. C., N. S., 73.

49. Fraud—Instrument for purpose fraudulent as to third party—Binding between parties—Construction of mortgage—Sale with conditional right of re-purchase.

*Shaw* v. *Jeffery*, 13 Moo. P. C. C. 432.

50. Fraud—Failure of proof—New issue of negligence not to be raised in appeal.

*Connecticut Fire Insurance Co.* v. *Kavanagh*, L. R. (1892) A. C. 473.

51. Gift *inter vivos*—Law of substitution—*Héritiers*, extension of meaning of—*Droit de retour.*

*Herse* v. *Dufaux*, L. R. 4 P. C. 468.

52. Highway, public—Soil of vested in whom—Registration in Montreal as public place—Previous enjoyment by public as public way—Subsequent similar enjoyment—23 Vict. c. 72, s. 10, sub-s. 6.

*De la Chevrotière* v. *Cité de Montréal*, L. R. 12 App. 149.

53. Husband and wife—Custody of children—Husband's misconduct

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—[illegible] ordinary [illegible] by [illegible] considerations—[illegible] remarks on this [illegible].

[illegible] 3 L. R. 1 P. C. 465.

2. Income-tax—Income in nature of gain over loss—New Brunswick—[illegible] 31 s. 4 New Brunswick Act.

[illegible] v. Sullivan, L. R. 1 App. 573; 36 L. J. P. C. 33.

3. Incorporation of Railway Co.—Validity of municipal bye-law—Conditions precedent—Law of Canada, 34 Vict. c. 43, 37 Vict. c. 2.

*Great Western and National Railways of Canada* v. [illegible] of Peterborough, L. R. 13 App. 136.

4. Insurance company—Canadian Ordinance, 4 Vict. c. 37—6 Vict. c. 21, s. 4—Subscription of policies—Seal of Corporation—Powers of manager—Case stated.

[illegible] v. M'Gillivray, 13 Moo. P. C. C. 87.

5. Justice of District Court, removal of, to another District Court—Grant of precedence over other judges of the Court.

*In re Justice Elzear Bedard*, 7 Moo. P. C. C. 23.

6. Land—Contract for grant of to A. from government—Part payment—Assignment of interest to B., a creditor, in consideration of £[illegible]—Possession taken by B. and grant obtained with privity of A.—A. bankrupt, B. his assignee—Death of B.—New assignee to A.—Bill against B.'s devisee for redemption, on ground that original transaction a mortgage, dismissed.

*Holmes* v. *Mathews*, 9 Moo. P. C. C. 413.

59. Land—Tenant in possession of—Same right to enforce equities against purchaser as against vendor—Interest under collateral agreements—Possession amounts to notice of tenant's interest—*Semble*, endorsement on deed of receipt of consideration money acknowledged in body of deed not customary in Canada.

*Barnhart* v. *Greenshields*, 9 Moo. P. C. C. 18.

60. Lands reserved to the Indians—Rights of the Province as against the Dominion—British North America Act, 1867, s. 109.

*S. Catherine's Milling and Lumber Co.* v. *The Queen*, L. R. 14 App. 46.

61. Lands, taking of for public improvements—Canadian Act, 14 & 15 Vict. c. 128, ss. 66, 68—Corporation of Montreal—Settlement of value—Evidence of experts—Swearing witnesses by justices—Waiver of right to complain of illegal jurisdiction.

*Beaudry* v. *Mayor, &c. of Montreal*, 11 Moo. P. C. C. 399.

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62. Law Reform Act, 37 Vict. c. 7 (Ontario), ss. 32, 33—38 Vict. c. 11 (Canada Supreme Court Act), ss. 17, 22, 38—Jurisdiction of Queen's Bench and Supreme Court—Rule to set aside verdict —Misdirection—New trial.

*Connecticut, &c. Co.* v. *Moore*, L. R. 6 App. 644.

63. Legislation—British North America Act, 1867, ss. 91, 92—Reading and interpretation of—Distribution of legislative power—"Property and civil right"—"Regulation of trade and commerce"—Validity of Ontario Act, 39 Vict. c. 24, as to fire insurance in the Province—Consistency of with Dominion Act, 38 Vict. c. 20, as to licensing insurance companies—Prevalence of statutory conditions over conditions sought to be imposed by insurance companies—*Interim* note not a policy—Interpretation of.

*Citizens Insurance Co. of Canada* v. *Parsons; Queen Insurance Co.* v. *Parsons;* L. R. 7 App. 96.

64. Legislation—British North America Act, 1867, ss. 91, 92, sub-ss. 9, 13, 16—Legislative powers of Dominion Parliament—Validity of Canada Temperance Act, 1878—Objects and scope of—"Peace, order, and good government"—Provision for special application of Act to particular places—Effect of on character of Act as general legislation.

*Russell* v. *Reg.*, L. R. 7 App. 829; 51 L. J. P. C. 77.

65. Legislation—British North America Act, 1867, ss. 91, 92—Liquor Licence Act of 1877, c. 181, Revised Statute of Ontario—Powers of local legislature—Regulations of local board—Imprisonment with hard labour—Subjects falling in different aspects within both s. 91 and s. 92 of British North America Act.

*Hodge* v. *Reg.*, L. R. 9 App. 117.

66. Legislation—British North America Act, 1867, ss. 91, 92—Canadian Act, 37 Vict. c. 103—Powers of Dominion Parliament—Incorporation of association to carry on definite kinds of business—Code of Civil Procedure, c. 10, s. 1, arts. 997, 998.

*Colonial Building and Investment Association* v. *Attorney-General of Quebec*, L. R. 9 App. 157.

67. Legislation—British North America Act, 1867, ss. 91, 92, 129—Canada Act, 22 Vict. c. 66—Inability of legislature of Ontario or Quebec or of both to repeal or modify—Invalidity of Quebec Act, 38 Vict. c. 64—Right to sue for a declaration of—Effect of resolution of Church Synod.

*Dobie* v. *Temporalities Board*, L. R. 7 App. 136.

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11. [redacted]

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12. [redacted]

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13. Marine insurance—Loss by peril not insured against—Nature of abandonment necessary to be made—Civil Code, arts. 2544, 2545.

*Commercial Insurance Co. v. Leduc*, 4 L. C. R. P. C. 42.

14. Marine insurance—Time policy—Warranty of seaworthiness—Different stages of—*Wise v. Thorburn*, 1 B. & Ald. 391, discussed.

*Quebec Marine Insurance Co. v. Commercial Bank of Canada*, 7 Moo. P. C. C. N. S. 1.

17. Marriage—Nullity of—Ordinance of Louis XIII. 26 Nov. 1639, art. 6 — Strict interpretation of — Evidence of contracting capacity.

*Scott v. Paquet*, L. R. 1 P. C. 552.

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78. Mortgage—Right to make payments to bar foreclosure—Limitation, Statute of—Consolidated Statutes of New Brunswick, c. 84, ss. 29, 30.
*Lewin* v. *Wilson*, L. R. 11 App. 639.

79. Mortgagor and mortgagee—Rights of before Canada Act, 7 Will. 4, c. 2—Rights since—Discretion given to Court to allow redemption.
*Smyth* v. *Simpson*, 7 Moo. P. C. C. 205.

80. Mortgagor and mortgagee—Notice—Right of intervention—Sec. 154 of Civil Procedure Code.
*Carter* v. *Molson*, L. R. 10 App. 664.

81. Mortmain—Warranty—Vendor of land.
*Chaudière Gold Mining Co.* v. *Desbarats*, L. R. 5 P. C. 277.

82. Negotiable instrument—Civil Code of Lower Canada, arts. 776, 2349—Essential to gift—*Possession vaut titre*—Possession by agent of bank—Certificate producible when interest paid—Communication of reasons of judge below.
*Richer* v. *Voyer*, L. R. 5 P. C. 461.

83. Negotiable instrument—Promissory notes—Transfer of on account of creditor—*En déconfiture*—*Saisée arrêt* issued by other creditors—Attachment of notes—Validity of transfer.
*Hutchinson* v. *Gillespie*, 4 Moo. P. C. C. 378.

84. New trial—Damages—Misdirection—Negligence—Civil Procedure Code, s. 426, sub-s. 11.
*Lambkin* v. *S. E. Rail. Co.*, L. R. 5 App. 352.

85. *Nouvel œuvre, action en dénonciation de*—Only during progress of work—Old French law—Right of public offices to sue on behalf of public for demolition of work erected on public domain without licence—Actual damage not necessary—Judgments of dissenting judges written after judgment delivered and sent to England for appeal—Condemnation of such course.
*Brown* v. *Gugy*, 2 Moo. P. C. C., N. S., 341. *Vide post*, 110.

86. Parish *fabrique*—Rights of parishioners—Power of Marguilliers—Competency to bring or authorise action.
*Curé de Verchères* v. *Corporation of Verchères*, L. R. 6 P. C. 330.

87. Partnership—Loan by one of three partners—Partnership not thereby constituted between firm and borrower—Civil Code of Lower Canada, arts. 1831, 1855.
*Singleton* v. *Knight*, L. R. 13 App. 788.

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[illegible]

89. Pawnee's right—Seizure of pawnor by Crown—Acts or omissions of Crown officers—Damages—29 Vict. c. 2 Canada—[illegible] Canada.

*Union and Mercantile Insurance Co.* v. *Reg. and Western Assurance Company* [illegible] 3 [illegible] App. 287. (See NOVA SCOTIA 2.

90. Pledge, pawnbroker—Canadian statutes, 57 & 58 Vict. c. 43, s. 14; 57 & 58 Vict. c. 43, s. 2, s. 1. as to real pawning—Enumeration of goods in mass—Assessment of penalty, effect of.

*Lamont* v. *Allan, The Hibernia*, L. R. 4 P. C. 511.

91. Pledge of goods in hand for advances—Customs to hold for pledgees—Set off against goods by shipowner master of borrowers—Constructive delivery to pledgees.

*Young* v. *Lumsden*, 6 Moo. P. C. C. N. S. 426.

92. Pledge—Liability to return—Lender of land secured by—Not mortgagee under art. 2178 Civil Code, giving right to detain for other debts of owner—Collateral contract—Intention of signatories to limit to amount of specific claims—Effect of contract by such intention.

*Smart* v. *Proulx*, L. R. 14 App. 87.

93. Possessory action—Nature of possession required to maintain—Code of Civil Procedure Lower Canada, ss. 946, 947, 948, 52.

*De Gaspé* v. *Bossange*, L. R. 4 App. 135.

94. Power of one party to another in writing—Necessary execution of by deputy—Authority of agent to appoint deputy.

*Quebec, &c. Rail. Co.* v. *Quinn*, 12 Moo. P. C. C. 232.

95. Power of sale by usufructuary—Formalities—Construction—Condition annexed by Court on unnecessary application for authority to sell land.

*Leclere* v. *Beaudry*, L. R. 5 P. C. 362.

96. Practice—Code of Civil Procedure, arts. 1178, 798, 801—Interlocutory judgment—Right of appeal.

*Goldring* v. *La Banque D'Hochelaga*, L. R. 5 App. 371.

97. Precious metals, right of Province to—Conveyance of public lands—British North America Act, 1867, s. 109.

*Attorney-General of British Columbia* v. *Attorney-General of Canada*, L. R. 14 App. 295.

98. Prerogative of Crown—Relations between Crown and Provinces—British North America Act, 1867—Winding up of bank—

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Priority of provincial government over other simple contract creditors.

*Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.

98. Prescription—Evidence of—*Action en bornage*—Boundary line—Construction of deeds and evidence—Mention of quantity in deed—Not an ascertained piece accurately described containing so much "or thereabouts."

*Herrick* v. *Sixby*, L. R. 1 P. C. 436.

99. Prescription—Action by seigneur—Title—Possession—6 Geo. 4, c. 59—Surrender to and regrant *uno flatu* by the Crown—Ancient French law—Adverse possession enuring in favour of party deriving through predecessor in possession—Transfer how evidenced.

*Macdonald* v. *Lambe*, L. R. 1 P. C. 539.

100. Principal and agent—Bank manager—Misapplication of funds—Ordinary course of bank business—Negligence.

*Bank of Upper Canada* v. *Bradshaw*, L. R. 1 P. C. 479.

101. Principal and agent—Marine insurance by agent—Right of undisclosed principal to sue in own name.

*Browning* v. *Provincial Insurance Co. of Canada*, L. R. 5 P. C. 263.

102. Principal and surety—English and Canadian law identical—*Acte de cautionnement*—Special recitals followed by general operative words—Generality not controlled.

*Bank of British North America* v. *Cuvillier*, 14 Moo. P. C. C. 187.

103. Principal and surety—Prolongation of time—Discharge of surety—Old French law—Bill of exchange—Nature of by French law.

*Bellingham* v. *Freer*, 1 Moo. P. C. C. 333.

104. Promissory notes—Indorsement as co-sureties—Liability of indorsers to equal contribution *inter se*.

*Macdonald* v. *Whitfield*, L. R. 8 App. 733.

105. Public Lands Act of 1869, s. 16—Location ticket, rights of holder of—Timber-cutting licensee, protection against—Forest Act of 1883.

*Gilmour* v. *Mauroit*, L. R. 14 App. 645.

106. Public Schools Act of Manitoba, 1890—Abolition of denominational system of public education—Validity of Act—Constitutional Act of Manitoba, 1870 (33 Vict. c. 3, Dominion Statute).

*City of Winnipeg* v. *Barrett*; *Same* v. *Logan*, L. R. (1892) A. C. 445.

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107. Quasi-contract—Civil Code, art. 1041—*Commencement de preuve*, what.

*Price* v. *Neault*, L. R. 12 App. 110.

108. Railway Act, 1868 (31 Vict. c. 68), s. 7, sub-s. 6; s. 9, sub-ss. 10, 17—Validity of award—Compensation—Invalid transfer by railway company—Quebec Act, 39 Vict. c. 2—Power of provincial legislature.

*Bourgoin* v. *Compagnie du Chemin de Fer de Montréal, &c.*, L. R. 5 App. 381.

109. Railway company—Advances to for completion of connected railway in United States of America—*Ultra vires.*

*Commercial Bank of Canada* v. *G. W. R. Co. of Canada*, 3 Moo. P. C. C., N.S., 295.

110. Railway company—Railway Act, 14 & 15 Vict. c. 51—Consolidated Statutes of Canada, 22 Vict. c. 66—Notice—Compensation—*Action en dénonciation de nouvel œuvre.*

*Jones* v. *Stanstead, &c. Railway Co.*, L. R. 4 P. C. 98, *Vide ante*, 85.

111. Railway company—Right of to commence operations—Dominion Act, 46 Vict. c. 24—Order of railway committee, effect of—Conditions precedent—Consolidated Railway Act, 1879.

*Corporation of Parkdale* v. *West*, L. R. 12 App. 602.

112. Railway—Construction of—Embankment giving way—Presumption of its insufficiency—Absence of rebutting evidence—Non-direction of jury by judge—Ground for new trial, when—Rule as to precaution in permanent works against extraordinary external violence—Canadian Act, 22 Vict. c. 13, s. 57—Appealable value—Adding costs to bring case within.

*G. W. Railway of Canada* v. *Braid* } 1 Moo. P. C. C.,
*Ditto ditto* v. *Fawcett* } N.S., 101.

113. Railway—Liability of to seizure and sale—Dominion Act, 46 Vict. c. 24—Quebec Act, 43 & 44 Vict. c. 49, s. 11—Proviso as to pending suits—Applicability of to proceedings in execution.

*Redfield* v. *Corporation of Wickham*, L. R. 13 App. 467.

114. Railway, what part of, taxable property—Quebec Act, 40 Vict. c. 60, ss. 323, 326, 327—Special leave to appeal—Ground on which granted not to be abandoned at hearing.

*Corporation of St. John's* v. *Central Vermont Railway Co.*, L. R. 14 App. 590.

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115. Ratification—Illegality of original transaction—Necessity of full knowledge.

*La Banque Jacques-Cartier* v. *La Banque d'Epargne de la Cité et du District de Montréal*, L. R. 13 App. 111.

116. *Res judicata*—"*Transaction*"—Specific performance—Powers of *avoué.*

*King* v. *Pinsoneault*, L. R. 6 P. C. 245.

117. Riparian owner—Navigable river—Floating wharf and boat-house—Navigation not obstructed—Damages for interference with stream, right to.

*Booth* v. *Ratté*, L. R. 15 App. 188.

118. Water—Riparian proprietors—French law in Quebec—*Droit d'accès et de sortie*—Navigable rivers—Obstruction to navigation—Damage.

*Bell* v. *Corporation of Quebec*, L. R. 5 App. 84. See *post*, 143.

119. Riparian rights—River tidal and navigable—Obstruction to *accès et sortie*—Quebec Railway Consolidation Act, 1880, s. 9—No right given by to railway company to inflict damage on land not taken without compensation—Liability of railway company to action when steps not taken under Act of 1880 to authorise their actions.

*North Shore Railway Co.* v. *Pion*, L. R. 14 App. 612.

120. Sale of goods by weight or measure—Acts remaining to be done—Identity of old French and English laws as to measure of damages—Power to reject or modify pleadings—Election by plaintiff of form of action.

*Boswell* v. *Kilborn*, 15 Moo. P. C. C. 309.

121. Sale of *immeuble* by sheriff—Duty of vendor to give possession—Rights of purchaser.

*Prévost* v. *Compagnie de Fives-Lille*, L. R. 10 App. 643.

122. Sale of specific goods—Vesting of property—Seller's right to price—Non-vesting till something done by seller, or waived—Law of England and Canada alike.

*Gilmour* v. *Supple*, 11 Moo. P. C. C. 551.

123. Sale of timber—Delivery prevented by storm—Action to recover purchase-moneys, loss by repurchase, and damages for breach of contract, held maintainable—Completion of sale—Transfer of property—Risk—Effect of taking possession of part after day named for delivery of whole, and at different place—Old French Law.

*Logan* v. *Le Mesurier*, 6 Moo. P. C. C. 116.

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124. Sale of timber in possession of guardian or garnishee—Contract for—Construction of.
*Maclaren* v. *Murphy, Connolly* v. *Maclaren*, L. R. 4 P.C. 262.

125. Satisfaction—Promise to pay sum to plaintiff if she married promiser's adopted son—Non-claim during promiser's life—Provision by promiser *inter vivos* for plaintiff, his son, and their family—Evidence of cousins-german to party—Admissibility of, *quære*—Practice—Transmission on petition of originals of documents to compare handwriting.
*McCarthy* v. *Judah*, 12 Moo. P. C. C. 47.

126. Servitude, real—Civil Code, arts. 499, 553, 554—Obligation to allow and repair a road—Prescription.
*Dorion* v. *Les Ecclésiastiques, &c.*, L. R. 5 App. 362.

127. Sheriff, clerk of—Action by sheriff against clerk's representatives for account—Held not to lie—Abatement of appeal on death of respondent, and renunciation of succession by heirs—Curator—Appeal revised against.
*Ermatinger* v. *Gugy*, 5 Moo. P. C. C. 1.

128. Ship—Compulsory pilotage—Exemption from responsibility while in charge of pilot—Canadian statutes, 27 & 28 Vict. c. 13, s. 14; c. 58, s. 9—Enactment of penalty, effect of.
*Redpath* v. *Allan*; *The Hibernian*, L. R. 4 P. C. 511.

129. Ship, contract to build—Mercantile house at N. directs house at Q. to make—N. house to send rigging—Contract entered into—N. house direct correspondent at L. to send rigging—Rigging sent—Delivered to Q. house—Property vested in N. house—Right of Q. house to retain against L. correspondent for lien for advances to builders, &c., though before delivery they had obtained assignment of ship from builders to themselves, and registered in name of one of their partners.
*Rogerson* v. *Reid*, 1 Knapp, 362.

130. Special verdict of jury, what—Sufficiency of proof of negligence more than a year before cause of action.
*Tobin* v. *Murison*, 5 Moo. P. C. C. 110.

131. Specific performance of agreement for a lease—Non-fulfilment of engagements.
*Counter* v. *Macpherson*, 5 Moo. P. C. C. 83.

132. Timber limits—Warranty on sale—Prior licences—Consolidated Statutes of Canada, c. 23.
*Ducondu* v. *Dupuy*, L. R. 9 App. 150.

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133. Timber, right to float down streams—Right to use improvements on stream without compensation—Canadian Act, 12 Vict. c. 87, s. 5.
*Caldwell* v. *McLaren*, L. R. 9 App. 392.

134. Tolls, power to levy—Canadian Act, 20 Vict. c. 227, s. 16 -22 Vict. c. 124—Reasonableness of charges, principle as to.
*Canada Southern Railway Co.* v. *International Bridge Co.*, L. R. 8 App. 723.

135. "*Transaction*"—Consideration—Mistake in law—Deceit—Mistake of fact—Old French Law.
*Trigge* v. *Lavallée*, 15 Moo. P. C. C. 270.

136. Trust, holder of shares in—Transfer of the shares by holder—Notice—Liability of transferee—Law of Quebec.
*Bank of Montreal* v. *Sweeny*, L. R. 12 App. 617.

137. Trustee—Canadian Act, 13 & 14 Vict. c. 84—Toronto, Simcoe, and Lake Huron Railway—Issue of debentures by Corporation of City of Toronto—Mayor and co-partner making profit of debentures—Trustee for Corporation—Objection for want of parties not taken below—Suit not defective of appeal.
*Bowes* v. *City of Toronto*, 11 Moo. P. C. C. 463.

138. Trustees as distinct from mandatories, right of suit by—Law of Canada, C. C. P. art. 19.
*Porteous* v. *Reynar*, L. R. 13 App. 120.

139. Tug—Vessel in tow—Not ordering tug to stop in fog—Running aground of vessel—Contributory negligence of.
*Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308.

140. Tutor—Power by old French law to alienate ward's property—Inventory—Administrative care in protection and management—No sale of immovable or mixed property without sanction of court—Nor of movables with certain exceptions—Bank shares not within the exceptions.
*Bank of Montreal* v. *Simpson*, 14 Moo. P. C. C. 417.

141. Tutor and minor—Extinguishment of claims by release or conduct operating as release—Assignment by minor to tutor—Lapse of years—Dealing amounting to release of claims after majority—Death of tutor—Practice—Documents improperly included in transcript—Non-objection to—Attempt to take advantage of on appeal—Refusal to rehear appeal.
*Motz* v. *Moreau*, 13 Moo. P. C. C. 376.

142. Usury laws—Loan—Retention of bonus or premium—Agent of

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lender—Old French law—Civil Code, arts. 1570, 1485—17 Geo. 3, c. 3, s. 5—16 Vict. c. 80 (Canadian Act).
*Kierzkowski* v. *Dorion*, L. R. 2 P. C. 291.

143. Water—Rights of riparian owner to use of flowing past his land—Rights of owner above and below—Identity of laws of England and Lower Canada on these points.
*Miner* v. *Gilmour*, 12 Moo. P. C. C. 131.

144. Water—Right to flow of from land—Riparian proprietors—Accumulation of flow—Aggravation of servitude—Civil Code of Quebec, s. 501—Consolidated Statutes for Lower Canada, c. 51.
*Frechette* v. *La Compagnie Manufacturière de St. Hyacinthe*, L. R. 9 App. 170. See *ante*, 117.

145. Water—Rights of seigneur to water of unnavigable river—Right of co-seigneur to divert for his exclusive use.
*S. Louis* v. *S. Louis*, 3 Moo. P. C. C. 398.

146. Will—Adulterine bastards—Limitation by way of substitution—Time when capacity of substitute determined.
*King* v. *Tunstall*, L. R. 6 P. C. 55.

147. Wills before Civil Code—Imperfect testamentary paper—Probate—Competency of heir to impugn will—Introduction of English law by 14 Geo. 3, c. 83, s. 10—Nuncupative wills—Oral evidence—Colonial Act, 41 Geo. 3, c. 4, s. 2.
*Migneault* v. *Malo*, L. R. 4 P. C. 123.

148. Will—Execution—*Coutume de Paris*—Notary.
*Evanturel* v. *Evanturel*, L. R. 2 P. C. 462.

149. Will—Forfeiture clause in case of litigation—*Jugement définitif*—Civil Code, arts. 760, 831—Penal clause only practically effectual where will unsuccessfully contested.
*Evanturel* v. *Evanturel*, L. R. 6 P. C. 1.

150. Will—Gift to trustees for corporation thereafter to be formed—Civil Code, arts. 869, 366, 836, 838—Devise, not to trustees with power of perpetual succession, but to trustees directed to convey to corporation lawfully created with power to possess—Lapse of gift—Mortmain—Gift on implied condition, fulfilment of which renders it lawful.
*Abbott* v. *Fraser*, L. R. 6 P. C. 96.

151. Will—Legacy by privilege of *hypothèque* by ante-nuptial contract—Produce of sale under execution of husband's real estate in hands of sheriff—Husband sole executor and residuary legatee of wife—Property included in marriage contract—Priority.
*Smith* v. *Brown*, 2 Moo. P. C. C. 35.

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152. Will of married woman in English—"Children"—Not construed as "enfants" to include grandchild.
*Martin* v. *Lee*, 14 Moo. P. C. C. 142. Explained in *McGibbon* v. *Abbott*, *post* 154.

153. Will—Quebec Act—Power to devise or bequeath by will executed either according to Canadian or English law—Will invalid by French law, not executed according to Statute of Frauds so as to pass freeholds in England, not valid to pass lands in Canada, though good to pass copyhold and leasehold in England.
*Meiklejohn* v. *Attorney-General and Caldwell*, 2 Knapp, 328.

154. Will—Power to apportion amongst a class—Power of exclusion—Illusory appointments.
*McGibbon* v. *Abbott*, L. R. 10 App. 653.

155. Will—Restraint on alienation—Seizure in execution—Invalidity of restriction.
*Renaud* v. *Tourangeau*, L. R. 2 P. C. 4.

**MANITOBA.**

Public Schools Act, 1890—Abolition of denominational system of education—Powers of provincial legislature—Dominion statute, 33 Vict. c. 3.
*City of Winnepeg* v. *Barrett*; *Same* v. *Logan*, L. R. (1892) A. C. 445.

**NEWFOUNDLAND.**

1. Attorney and practitioner—Striking off rolls—Order *nisi* for unless cause shown in four days—Absolute notwithstanding application to enlarge time to prepare defence—Reversed by Judicial Committee as irregularly and improperly made.
*Emerson* v. *Judges of Supreme Court of Newfoundland*, 8 Moo. P. C. C. 157.

2. Contract—Apportionment—Counterclaim by government of colony for unliquidated damages—Set-off against assignees of contract.
*Government of Newfoundland* v. *Newfoundland Railway Co.*, L. R. 13 App. 199.

3. Fishery—Statutes for regulating—Claim of Crown to ground formerly used as ship's room—Bar against if land not so used

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—No objection on appeal that defendant's title not specially pleaded to information for intrusion below.

*Attorney-General of Newfoundland* v. *Cuddihy*, 1 Moo. P. C. C. 82.

4. Land—Unoccupied at passing of 5 Geo. 4, c. 51—Occupied and enclosed before grant—Grantable as waste land under s. 15.

*Attorney-General of Newfoundland* v. *Ryan*, 1 Moo. P. C. C. 87.

5. Legislature—35 & 36 Vict. c. 45—Territorial dominion—Bays—Injunction—Exclusive use of territory for telegraphic communication—Act of Newfoundland, 17 Vict. c. 2.

*Direct United States Cable Co.* v. *Anglo-American Telegraph Co.*, L. R. 2 App. 394.

6. Legislature—House of Assembly—Power of arrest—Contempt committed out of the House.

*Semble.*—The House of Commons possesses this power only by virtue of ancient usage and prescription, the *lex et consuetudo parliamenti*.

*Semble.*—The Crown by its prerogative can create a legislative Assembly in a settled colony subordinate to Parliament, but with supreme power within the limits of the colony for the government of its inhabitants; but

*Quære*, whether it can bestow upon it an authority—viz., that of committing for contempt—not incidental to it by law.

The principles of *Beaumont* v. *Barrett*, 1 Moo. P. C. C. 59, and *Burdett* v. *Abbott*, 14 East, 137, examined.

*Kielley* v. *Carson*, 4 Moo. P. C. C. 63.

7. Prerogative—Treaty—Interference with private rights to compel obedience to provisions of—Acts of State.

*Walker* v. *Baird*, L. R. (1892) A. C. 491.

## NOVA SCOTIA.

1. Arbitrator, appointment of in default of proprietor—Not a judicial act—Fresh notice not necessary—Revised Statutes of Nova Scotia (5th Series), c. 7, s. 19—Award of fixed sum as estimated damages for all works or occupation necessary to or required by mining lessee—Not bad for uncertainty.

*Palgrave Gold Mining Co.* v. *McMillan*, L. R. (1892) A. C. 460.

**NOVA SCOTIA**—*continued.*

2. Assignment, deed of—Execution of—Effect of note appended to signature.

*Exchange Bank of Yarmouth* v. *Blethen*, L. R. 10 App. 293.

3. Attorney and barrister of Supreme Court—Order suspending from practising for having addressed a letter to the Chief Justice reflecting on the judge and the administration of justice generally—Discharged by the Judicial Committee, as substituting a penalty and mode of punishment not the appropriate and fitting punishment for the offence—Letter written by a practitioner in his individual and private character as a suitor, in respect of a supposed grievance as suitor, of an injury done to him as such suitor, and having no connection whatever with his professional character, or anything done by him professionally, either as an attorney or barrister—Only customary punishment for contempt of Court allowable—Professional punishment of indefinite suspension for an act not done professionally, and not *per se* rendering the party committing it unfit to remain a practitioner of the Court, not permissible.

*In re Wallace*, L. R. 1 P. C. 283.

4. Contract, validity of—Sale of land—Covenant running with—Easement—Agreement by vendor that adjoining land "should never be hereafter sold, but left for the common benefit of both parties and their successors."

Discretion of Privy Council to decide case without strict regard to precise terms of pleadings.

*McLean* v. *McKay*, L. R. 5 P. C. 327.

5. Foreclosure suit—Amendment of pleadings—Nova Scotia Revised Statutes, pt. 3, ch. 134, tit. 36, ss. 62, 63.

*Wallace* v. *McSweeney*, L. R. 2 P. C. 180.

6. Lands, rival claims to—Separate streams of title from distinct grants from Crown—Only material act of ownership under one entry by a third party relinquishing possession on judgment of ejectment against him — Under other continuous possession since 1815, uninterrupted except the above-mentioned entry—Presumption of valid grant—Adverse possession amounting to bar under Colonial Statute of Limitations.

*Des Barres* v. *Spey*, 29 L. T., N. S., 592; 22 W. R. 273.

7. Lease, right to—Priority of application—Nova Scotia Revised Statutes, 4th Series, c. 9.

*Mott* v. *Lockhart*, L. R. 8 App. 568.

**NOVA SCOTIA**—*continued.*

8. Legislation—British North America Act, 1867, s. 108—Passing of Nova Scotia railways to and vesting of in Dominion of Canada—Obligation under Nova Scotia Act, 30 Vict. c. 36—Power of Dominion Parliament—Construction of Dominion Act, 37 Vict. c. 16.

   *Western Counties Rail. Co.* v. *Windsor and Annapolis Rail. Co.*, L. R. 7 App. 178.

9. Libel—Demand under Canadian Insolvent Act, 1869—Writ of *capias*—Malicious prosecution—Misdirection—Privileged communication—Legal proceeding.

   *Bank of British N. America* v. *Strong*, L. R. 1 App. 307.

10. Marine insurance—Actual total loss—Sale of ship by order of Court—Proceeds less than salvage remuneration—Derelict.

    *Cossman* v. *West*; *Cossman* v. *British America Insurance Co.*; L. R. 13 App. 160.

11. Mistake, payment by—Liability to refund—Privity.

    *Colonial Bank* v. *Exchange Bank of Yarmouth, Nova Scotia*, L. R. 11 App. 84.

12. Salvage—*Quantum* to salvors—Reduction.

    *Owners of the Thomas Allen* v. *Gow*, L. R. 12 App. 118.

13. Will—Codicil confirming held not to confirm also intermediate codicil.

    *McLeod* v. *McNab*, L. R. (1891) A. C. 471.

**NEW BRUNSWICK.**

1. Collision—Negligence by complaining vessel—Non-excusability of party in default.

   *Emery* v. *Cichero*; *The Arklow*; L. R. 9 App. 136.

2. Legislative power, distribution of—British North America Act, 1867, s. 92, art. 2—Provincial Act, 33 Vict. c. 47.

   *Dow* v. *Black*, L. R. 6 P. C. 272.

3. Principal and agent—Misrepresentation by agent—No express command or privity of principal—Liability of principal—Principal a company.

   *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; 43 L. J. P. C. 31.

**NEW BRUNSWICK**—*continued.*

4. Railroad, contract to make—Breach—Jurisdiction at law or in equity—Inquiry as to damages.
   *S. Andrews and Quebec Rail. Co.* v. *Brookfield*, 13 Moo. P. C. C. 510.

5. Railway Company holding lands—Debentures of equitable mortgage on lands—Sale of lands by judgment creditors—Interest taken by judgment creditors in the lands—Freeholds sold under *fi. fa.*
   *Wickham* v. *New Brunswick and Canada Rail. Co.*, L. R. 1 P. C. 64.

**PRINCE EDWARD'S ISLAND.**

1. Attorney in Supreme Court—Arrest on mesne process—Privilege—Suspension from practice—No evidence—Order rescinded for irregularity.
   *In re Monckton*, 1 Moo. P. C. C. 455.

2. Practice—Appeal Court in Island—No appeal from Supreme Court direct to Judicial Committee—Allowance of Appeal to Governor and Council of Island advised—Appealable value.
   *In re Cambridge*, 3 Moo. P. C. C. 175.
   See now *ante*, pp. 222 *seq.*

**CAPE BRETON.**

Legality of annexation to Nova Scotia.
*In re Island of Cape Breton*, 5 Moo. P. C. C. 259.

## MEDITERRANEAN COLONIES.

**GIBRALTAR.**

1. Appeal, right to—Objection to verdict—Neglect to move Court below for new trial according to the practice there—No power in H. M. in Council to alter or set aside verdict—Refusal to advise H. M. to direct new trial.
   *Dagnino* v. *Bellotti*, L. R. 11 App. 604.

2. Bill of exchange—Presentment for acceptance—"This I accept, and you may call for it when you like"—Good parole acceptance in colony—Decision of Court below upon question of evidence not binding on Judicial Committee although in general

**GIBRALTAR**—*continued.*

followed—Conviction of witness for perjury no ground for reversing the judgment on appeal—Costs against appellant attempting to make use of conviction of this description.

*Canepa* v. *Larios*, 2 Knapp, 276.

3. Collision—Contributory negligence—18th rule.

*The William Frederick, The Byfoged Christensen*, L. R. 4 App. 669.

4. Collision—Contributory fault—Issue of cannot be raised for first time in final Court of Appeal.

*S.S. Pleiades, Owners of* v. *Owners of S.S. Jane*, L. R. (1891) A. C. 259.

5. Steamer approaching sailing vessel, duty of—Contributory negligence.

*Beal* v. *Marchais; The Bougainville; The James C. Stevenson*; L. R. 5 P. C. 316.

6. Ejectment—Owner—Real or personal estate—Conveyance by compromise.

*Tudury* v. *De Pina*, 15 Moo. P. C. C. 434.

7. Insurance—Plea by insurer that damages sustained by fire had not been ascertained in mode prescribed by their particular office—Damage fairly ascertained—Plea rejected.

*Hadwin* v. *Lovelace*, 1 Acton, 126.

8. Judge of inferior Court—Disregard by of inhibition—No attachment for contumacy and contempt, unless disobedience wilful and proceeding from improper motives.

Inhibition to Judge of Vice-Admiralty Court at Gibraltar not to be disregarded at his discretion, though he may consider that he is acting for the benefit of all parties.

Decree made after appeal and inhibition served personally on judge held not such a contempt under the circumstances as to entitle owners to attachment against the judge, and costs and damages.

*Barton* v. *Field*, 4 Moo. P. C. C. 273. See *post*, 11.

9. Jurisdiction of Supreme Court of Gibraltar—Procedure of that Court—Contract to advance money—Specific performance of refused—Damage for breach of—21 & 22 Vict. c. 27.

*Larios* v. *Gurety*, L. R. 5 P. C. 346.

10. Law of conquered colony—Charter under Great Seal instituting Court—Laws of England to be measure of justice between parties—Court to hold pleas of what nature and kind soever, and to issue warrants of execution for putting parties into possession under its decrees—English law of real property sub-

**GIBRALTAR**—*continued.*

stituted for ancient law of the conquered colony—Widow entitled to dower out of lands of late husband.

Law of conquered country alterable by king by proclamation or letters patent under the Great Seal, not solely by Order in Council.

Inhabitant of island ceded by Great Britain—To England after cession—Return to ceded island in which family had been left—Residence with them there for upwards of six years—Emigration to another country under the Government of Great Britain—Retention of character of British subject—Child born after the capitulation of the island, and before its final cession by treaty, not an alien.

*Quære*, whether an appellant, who wishes to avail himself of evidence not produced before the Court below, must not, either in his petition of appeal, or by a special petition for that purpose, pray that it may be received before the Judicial Committee.

*Jephson* v. *Riera*, 3 Knapp, 130.

11. Maritime lien—Vice-Admiralty jurisdiction—Necessaries—26 & 27 Vict. c. 24, s. 10, sub-s. 10.

*Laws* v. *Smith, The Rio Tinto*, L. R. 9 App. 356.

12. Slave Trade—5 Geo. 4, c. 113—Burden of proof of facts necessary to constitute liability to forfeiture or penalties upon prosecutor—Privileges given by s. 46 to seizors not for their benefit, but for their protection against liability to costs and actions on judge certifying, pursuant to 4 Geo. 3, c. 15, s. 46, that there was probable cause for seizure.

Vessel seized in Port of Gibraltar—Allegation that she was engaged in carrying slaves—Forfeiture—Owners, master, and mate condemned in penalties—Judgment of the Vice-Admiralty Court of Gibraltar reversed—Evidence of the persons being slaves, or intended to be dealt with as slaves, doubtful—Owner, master, or mate not proved to be cognisant of that fact—Seizors to prove—Monition from Judicial Committee to Judge and Registrar of the Vice-Admiralty Court of Gibraltar to transmit proceeds arising from sale of vessel decreed to be forfeited, and sold after appeal inserted and inhibition issued and served—Whole amount of proceeds to be brought into Court, not balance after deducting costs and fees incidental to seizure—Refusal to comply with such monition—Contempt—Attachment for by Judicial Committee against the Judge, Registrar, and Marshal of Vice-Admiralty Court.

*Barton* v. *Reg.*, 2 Moo. P. C. C. 19. See *ante*, 7.

**GIBRALTAR**—*continued.*

13. Slave trade—Receiving goods on board slave ship—Joint act of owner and master of vessel—Penalties given by 5 Geo. 4, c. 113, s. 7, joint, not several.

Owner of vessel subject of the Queen of Spain and resident at Cadiz—Vessel within British port—Liability to forfeitures and penalties under Slave Trade Abolition Act.

*Del Campo* v. *Reg.*, 2 Moo. P. C. C. 15.

14. Slave trade—Shipping goods to be employed in—Liability to penalty—Guilty knowledge of object of vessel—Conviction of felony under the Slave Trade Abolition Act, 5 Geo. 4, c. 113, s. 10—Appeal against a sentence in the Vice-Admiralty Court for penalties—Conviction previous to civil sentence—Undergoing punishment at time of appeal—Protest on ground of such conviction overruled.

*Sherwill* v. *The King*, 2 Moo. P. C. C. 1.

15. Statutory body, liability of—Nonfeasance of—Damage occasioned by, claim for—Construction of statutes.

*Sanitary Commissioners of Gibraltar* v. *Orfila*, L. R. 15 App. 400.

16. Vicar-general of Roman Catholic Church at Gibraltar—Liability to account for fees received for administering offices of church—Fees by custom regulated by and subject to control of Assembly of Elders or Junta, of which he is the head, and disposed of by them for the general purposes of the church—Injunction against receipt of such fees by Vicar-general and directing him to replace in certain part of church the tariff or table thereof—Varied by dissolving injunction, and decreeing him to account as receiver for all sums paid to him on account of the same.

No jurisdiction in Judicial Committee to direct release of party imprisoned for contempt of Court below, pending appeal respecting merits of suit.

Evidence not adduced in the Court below, nor forming part of the transcript, admitted on motion to be used at hearing of appeal, subject to all just exceptions.

*Hughes* v. *Porral*, 4 Moo. P. C. C. 41.

**MALTA.**

1. Collision—Narrow channel—Admiralty Regulations, 18th March, 1880, art. 21.

*Scicluna* v. *Stevenson, The Rhondda*, L. R. 8 App. 549.

2. Foreign judgment of competent court—Unimpeachable except for

**MALTA**—*continued.*

manifest error—Inapplicable *inter alios* unless *in rem*. *Dent* v. *Smith*, L. R. 4 Q. B. 414, followed.
*Messina* v. *Petrococchino*, 8 Moo. P. C. C., N. S., 375.

3. Judicial separation—Cruelty to child—*Ingiurie gravi*—Ordinance No. 5 of 1867, art. 46—Large discretion in tribunal having to judge of the facts—Not only acts but words designed to wound feelings of wife may amount to *ingiurie gravi*—Position of parties and habits and usages of the society in which they live to be regarded—Insults offered to the wife manifesting contempt of her in that character of special gravity, especially if offered in the presence of others—Wrongs of this description not to be estimated separately, but in combination one with another—Husband habitually treating his wife with harshness and insult—Keeping her in constant state of excitement and fear—Personal violence to adult daughter affecting her health during several months—Violence offered to daughter to be taken in conjunction with previous treatment of mother—Together constituting *ingiurie gravi* within art. 46 — Treatment of daughter by father ground under Maltese law for demanding separation by wife—Wife remaining in house for several months —Daughter continuing to suffer from consequences of ill treatment, requiring attention of mother—Departure of wife from husband's house on the first occasion of his leaving home—Matrimonial offences of husband not condoned.
*Sant* v. *Sant*, L. R. 5 P. C. 542.

4. Legitimation—Children *ex nefario coitu*—Jurisdiction—Considerations to govern exercise of—Ordinance of 1814.
*Gera* v. *Ciantar*, L. R. 12 App. 557.

5. Mercantile instruments not to be unnecessarily strictly construed —Obvious and expressed intention to be effectuated—Charter-party—Identity of English and Maltese law.
*Dimech* v. *Corlett*, 12 Moo. P. C. C. 119.

6. Primogeniture—Deed—Construction of.
*Apap* v. *Strickland*, L. R. 7 App. 156.

7. Primogeniture—Deed of foundation of—Construction of.
*Strickland* v. *Apap*, L. R. 8 App. 106.

8. Primogeniture—Descent in exclusively male line derived from female—Descent of barony established as hereditary feud—Pragmatic of Philip IV., No. 34.
*D'Amico* v. *Trigona*, L. R. 13 App. 806.

9. Primogeniture—Presumption that prescribed order of succession

**MALTA**—*continued.*

is "regular," admitting females in default of male issue of last holder in that line.

*Sovereras Trigona* v. *Sovereras d'Amico*, L. R. (1892) A. C. 69.

10. Principal and agent—Defence of action on behalf of principal—Damages—Recovery of from principal—Conditions for—Agent exceeding authority—Waiver or ratification by principal—Costs of appellant below and on appeal allowed.

*Frisiana* v. *Tagliaferro*, 10 Moo. P. C. C. 175.

11. Principal and agent—Liability of agent indorsing bill of exchange for principal—Liability of indorser to indorsee—Contract between in what consisting.

Appealable value—Subject-matter under—Special leave to appeal.

*Castrique* v. *Buttigieg*, 10 Moo. P. C. C. 94.

12. Real estate, descent of—Partition of—By law of Malta equally divisible among co-heirs of intestate—By Ordinances and Code in force in island, where property possessed in common cannot be "conveniently divided and without disadvantage," the same must be sold by auction—Suit for partition of villa residence with outhouses and ornamental grounds devolved by intestacy of late owner on his ten children—Opinion of Court below, after reference to experts, not so divisible—Decree for sale by auction in its entirety and subsequent division of amount realised in equal shares confirmed by the Judicial Committee—*Semble*, not competent for parties in such suit to propose, at the hearing of the appeal, fresh reference to experts for purpose of suggesting another scheme for division of property in litigation.

*Bugeja* v. *Camilleri*, L. R. 3 P. C. 258.

13. Salvage remuneration—Exact ascertainment of salvor's losses, effect of on calculating.

*Bird* v. *Gibb*; *The De Bay*; L. R. 8 App. 559. Considered in *The City of Chester*, L. R. 9 P. D. 182.

14. Salvage—Increase of—Derelict vessel and cargo.

*Papayanni* v. *Hocquard*, 4 Moo. P. C. C., N. S., 96.

15. Trade marks—Right to exclusive user—Infringement.

*Somerville* v. *Schembri*, L. R. 12 App. 453.

# WEST INDIAN COLONIES.

## JAMAICA.

1. Administration—Intestate resident in England at death—Personal estate both in England and Jamaica—Distribution according to law of country where intestate resident at death—Grant in England of administration to person dying there—Grant in colonies to same person.

   *Burn* v. *Cole*, Ambl. 415.

2. Administration suit—Order to pay legacy in—Registration of—Effect of—*Venditioni exponas*—Jamaica Act, 8 Vict. c. 48, to declare judgments a lien upon land, to abolish arrest in certain cases, and for other purposes.

   *Balfour* v. *Watt*, 8 Moo. P. C. C. 190.

3. Administration suit—Reference to master as to what due and owing to parties to suit—Master's report—No exceptions taken to—Petition to Court by party claiming sum of money for advances to infant, a party in the cause, and objecting to finding of master in not allowing for such advances—Reference to master whether any and what sum to be paid for advances—Irregular and reversed with costs in the Court below, but without costs of the appeal as same relief might have been obtained on a re-hearing of the petition in the Court below.

   *Thompson* v. *Cartwright*, 3 Moo. P. C. C. 421.

4. Agency of estates—Jamaica Act, 28 Geo. 2, c. 19, s. 8—Charges by executors and trustees for the management of estates—No commission given by Act upon sale of an estate—Sale actually made and completed in island.

   *Henckell* v. *Daly*, 1 Moo. P. C. C. 51.

5. Agents of estates—Jamaica Act, 24 Geo. 2, c. 19—Commission of 6 per cent. to agents, trustees, guardians, executors, &c., for management and disposal of rents and profits of an estate—Remuneration for trouble and responsibility of conducting business of merchant on island—Payable only to persons actually resident on island, and capable and willing to act in trusts of estate—Commission of 5 per cent. by the same Act for receiving and remitting moneys only claimable where receipts on payments actually made on island.

   *Semble*, where a party is made a co-plaintiff, having no interest in one of the objects sought by his co-plaintiff, and the bill is sustainable only in respect of that object, it must be dismissed.

   *Denton* v. *Davy*, 1 Moo. P. C. C. 15.

**JAMAICA**—*continued.*

6. Agents—Consignment of cargo by request of purchasers to purchasers' factors—Purchasers indebted to factors—Further advance by factors to purchasers—Insolvency of purchasers—Repudiation of cargo and direction of factors to sell on arrival for benefit of vendor—Acquiescence of vendor—Subsequent claim to lien by factors—Waiver of—Appeal under 7 & 8 Vict. c. 69 direct from inferior Court in Colony to Queen in Council.
*Harrison* v. *Scott*, 5 Moo. P. C. C. 357.

7. Attorney and agent of plantation—Advance of supplies by factor of—No privity constituted thereby between creditor and owner of estate—Deed entered into by owner of estate with trustees for payment of certain creditors therein enumerated—Creditors not parties—No lien created thereby on estate of debtor in favour of creditors named therein.
*Steele* v. *Murphy*, 3 Moo. P. C. C. 445.

8. Attorney and manager—Injunction obtained against by *cestui que trust* of moiety of produce of certain plantations and estates in Jamaica, prohibiting from shipping or consigning any portion of produce save as such *cestui que trust* should direct—Attorney trustee of same moiety—Injunction dissolved.
*Israell* v. *Rodson*, 2 Moo. P. C. C. 43.

9. Attorneys to absent proprietors of estates—Remuneration for performance of duties, including that of factorage—Commission of 6 per cent.—Appointment by of other persons as factors—Attorneys to be looked for for payment for supplies to estates and commission.
*Pennant* v. *Simpson*, 1 Knapp, 399.

10. Arbitration respecting freehold estates and interests in land—Married women parties—Validity of award.
*Strachan* v. *Dougall*, 7 Moo. P. C. C. 365.

11. Bankruptcy Act, 1869, s. 39—Mutual dealings—Agent's authority not revoked till notice of act of bankruptcy—Receipt of money under—Right to set off debt thus incurred—Trustee's title, date of accrual of.
*Elliot* v. *Turquand*, L. R. 7 App. 79.

12. Bishopric of Jamaica—Letters patent erecting—Jurisdiction of bishop to punish rectors, &c., according to laws and canons of church of England—Refusal of rector to enter marriage on parish registry—Citation of by bishop—Entry made—Suspension of rector for previous refusal—Publication of suspension—Proceedings reversed as wholly irregular.
*Bowerbank* v. *Bishop of Jamaica*, 2 Moo. P. C. C. 449.

**JAMAICA**—*continued.*

13. Blockade—Constitution of.

*The Nancy*, 1 Acton, 58.

14. Costs—Action of trespass in Supreme Court—Damages laid above limit of jurisdiction of local Courts—5 Vict. c. 26—Damages recovered below limit—Test of right to sue in Supreme Court and recover Supreme Court costs.

*Emery* v. *Binns*, 7 Moo. P. C. C. 195.

15. Escheated property, grant of—Non-prosecution by grantee of rights of Crown—Liability of grantee to account to Crown for rents and profits.

*Mason* v. *Attorney-General of Jamaica*, 4 Moo. P. C. C. 228.

16. Executor—Account of testator's estate—Jamaica statute, 15 Vict. c. 16—Executor of executor—Right of executor to have account of his executor's estate taken.

*Smith* v. *O'Grady*, L. R. 3 P. C. 311.

17. Executors—Compromise by of debt due by one of themselves—Fraud—Settlement in account—Liability of executors.

*De Cordova* v. *De Cordova*, L. R. 4 App. 692.

18. Governor, authority of—Act of State—Jurisdiction—Privilege—Pleading.

*Musgrave* v. *Pulido*, L. R. 5 App. 102.

19. Insolvency—Jamaica Insolvent Act, 11 Vict. c. 28, s. 67—Transfer, in contemplation of insolvency of estate, to creditor for benefit of such creditor within six months before declaration of insolvency—Fraudulent and void against official assignee—No evidence of fraudulent preference.

*Nunes* v. *Carter*, L. R. 1 P. C. 342.

20. Judgment creditor—Rights of against prior incumbrancer—Sale in lieu of foreclosure—Standing over of appeal for service of parties below.

*Gordon* v. *Horsfall*, 5 Moo. P. C. C. 393.

21. Legislative Assembly—Power of punishing contempts—Committal of party guilty of publishing libellous paragraphs, which had been resolved a breach of the privileges of House, to custody of keeper of common gaol in county of Middlesex in Jamaica, to be detained during the pleasure of the House.

*Quære*, whether the warrant to the serjeant-at-arms, directing him to take the appellant into custody, justified him in committing such custody to the gaoler of the gaol in Middlesex.

*Beaumont* v. *Barrett*, 1 Moo. P. C. C. 59.

22. Libel, indictment for, found at assizes—Removal by *certiorari* to

**JAMAICA—continued.**

Supreme Court—Trial on civil side—Verdict of guilty—Judgment suspended pending application to Queen in Council—Petition for leave to appeal dismissed—Query, whether in absence of final judgment appeal will lie.

*In re Lewis*, 10 Moo. P. C. C. 32.

22. Libel—Privileged communication—*Quare* prudent malice on plaintiff.

*Jenoure* v. *Delmege*, L. R. [1891] A. C. 73.

24. Marriage—Bond in contemplation of to mortgage land and raise money for purposes of settlement—Mortgage by way of settlement in pursuance of bond, including cattle, stock, and plantation implements—Cattle and stock not included in bond—Mortgage not able to enlarge provisions of bond.

*Turner* v. *Barclay*, 9 Moo. P. C. C. 264.

25. Partnership—Taking accounts between three, A. B., A. B. C., B. C.—B. C. cannot charge commission for collecting debt due to the two other partnerships.

*Whittle* v. *McFarlane*, 1 Knapp, 311.

26. Pending suit in England—Subsequent suit in plantations for same matter—No bar.

*Bayley* v. *Edwards*, 3 Swanst. 703.

27. Practice—Act No. 41 of 1872, s. 19—Service of summons on a company domiciled abroad—"Persons residing out of Jamaica."

*Royal Mail Steam Packet Co.* v. *Braham*, L. R. 2 App. 381.

28. Practice—Motion by petition for discharge of receiver—Motion refused—Petition dismissed with costs—Directions engrafted on order of dismissal—Dismissal reversed—Order dismissing motion for settlement of accounts and payment over of balance, on ground that accounts not fully taken under original decree or balance ascertained, affirmed on appeal, but without costs.

*Palmer* v. *Barrett*, 1 Moo. P. C. C. 415.

29. Principal and surety—Bond to pay collections of taxes for 1842—Arrears at date of bond for taxes collected in 1841—Appropriation of taxes collected in 1842 to paying off 1841 arrears—Liability of surety—Appeal under 7 & 8 Vict. c. 69 direct to Queen in Council.

*Attorney-General of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239.

30. Prison—Surgeon of district prison of S. Katherine—5 Will. 4, c. 8;

**JAMAICA**—*continued.*

4 Vict. c. 26 of local legislature—Office during pleasure—Appointment of another in place of holder of office.

Special leave to appeal granted *ex parte* from order of Supreme Court at Jamaica issuing peremptory *mandamus*—Right to move upon counter-petition to quash leave.

*Hill* v. *Reg.*, 8 Moo. P. C. C. 138.

31. Probate of testamentary paper in the nature of a codicil—Grant of by consent in common form—Not afterwards revocable on allegation that conditions on which such consent given not complied with, there being no proof of fraud or circumvention practised upon either Court or parties.

*Nicol* v. *Askew*, 2 Moo. P. C. C. 88.

32. Stoppage *in transitu*—Confirmation of agent's act by principal.

*Hutchings* v. *Nunes*, 1 Moo. P. C. C., N. S., 243.

33. Usury—Mortgage debts on West India estates demurred against as usurious—Demurrer overruled as informal and contrary to usage—Question of usury not therefore fairly before Court.

*M'Anuff* v. *Willis*, 1 Acton, 119.

34. Wharf—Liability of absentee owner of, for negligence of agent in conduct of wharf—Jamaica Act, 7 Vict. c. 57.

Appeal allowed though subject under appealable value on account of public importance of question—Rule 1 of Order in Council 13 June, 1853, allowing costs to successful appellant, discretionary in Court, only to be allowed in special circumstances.

To entitle appellant to costs application to be made at hearing.

*Lindo* v. *Barrett*, 9 Moo. P. C. C. 456.

35. Will—Devise in fee—Revocation by codicil—Devise of same property without limitation—Fee or for life—Intention of testator.

*Doe* v. *Thompson*, 12 Moo. P. C. C. 116.

36. Will—Inrolment of decree by one of the defendants to suit for carrying into effect trusts of a will five months after decree, during infancy and absence of plaintiff from island at cost of the estate—Not done with improper haste, infants being properly represented according to the practice of Jamaica—Order vacating the inrolment reversed.

*Hyslop* v. *Jones*, 3 Moo. P. C. C. 15.

37. Will—Invalid to pass real, valid to pass personal, estate—Slaves devisable as real estate—Act to abolish slavery, 3 & 4 Will. 4, c. 73—Compensation money—Personal estate.

*Richards* v. *Attorney-General of Jamaica*, 6 Moo. P. C. C. 381.

**JAMAICA**—*continued.*

38. Will—Marriage and birth of child—Revocation of will made previous to marriage—Tacit condition annexed to will at the time of making not to have effect, if the deceased have a wife, and child subsequently born—Such tacit condition to will of personal as well as real estate—Annexed at the time of making will, which speaks from that period and not from testator's death.

*Israell* v. *Rodon*, 2 Moo. P. C. C. 51.

39. Will—Mortgage by A. of estate in 1774—Annuity by will in 1775 to widow in lieu of dower—Subsequent mortgage of his interest by W., original mortgagee—Bill by R. in 1786 against W. and real and personal representative of A. for foreclosure—Decree in 1791 declaring that widow *bonâ fide* purchaser of annuity and entitled to be paid it out of mortgaged estate—Suit not prosecuted—Death of widow in 1794—Bill by her representative in 1822 against heir of W. and others claiming under him and heirs and devisees of A. for payment of arrears of annuity during her lifetime, or for sale of estate and payment of arrears out of proceeds—Annuity not expressly charged on real estate of A.—Mere pecuniary legacy—Decree of 1791 erroneous.

When a Court of Equity is called upon to carry into execution a former decree, it is not bound to do so if, upon inquiry into the merits, it appears to have been erroneous.

Remedies for recovery of arrears held lost by length of time.

The mortgagor and his heirs only can sue the mortgagee for an account and redemption, unless it can be shown that there is collusion between them and the mortgagees.

*White* v. *Parnther*, 1 Knapp, 179.

40. Will—Trustee not acting in trusts of—Qualified and ready and willing to act—Title of to share of commission under the Jamaica Act, 24 Geo. 2, c. 19, s. 8.

*Grant* v. *Campbell*, 1 Moo. P. C. C. 43.

**BRITISH HONDURAS.**

1. Constitution and government of—Colonial Acts, 16 Vict. c. 4; 20 Vict. c. 16; 21 Vict. c. 1—Agent of settlement in England—Cessation of political character of—Action for salary.

*Hodge* v. *Att.-Gen. of British Honduras*, 2 Moo. P. C. C., N. S., 325.

2. Criminal proceedings—Conviction set aside—Order striking solicitor off roll reversed—Practice—Grounds for granting special leave to appeal.

*In re Dillet*, L. R. 12 App. 459.

**BRITISH HONDURAS**—*continued.*

3. Mortmain Act, 9 Geo. 2, c. 36—Non-applicability of to colony—Non-introduction of into colony.
   *Jex* v. *McKinney*, L. R. 14 App. 77.

4. Partnership, law of—Dissolution—Accretion to partner's capital—Distribution of surplus assets—Lien.
   *Binney* v. *Mutrie*, L. R. 12 App. 160.

5. Territorial sovereignty — Adverse possession against Crown—Sixty years—Date of acquisition of territorial sovereignty by Crown.
   *Attorney-General for British Honduras* v. *Bristowe*, L. R. 6 App. 143.

## INCUMBERED ESTATES COURT, WEST INDIES.

Lien of consignee of West Indian estate on *corpus* of estate—Difference between consignee and manager—No lien of manager for advances for cultivation—Manager appointed by trustee in possession—Manager appointed by Court of Chancery—Manager recognised by mortgagees—Appeal to Queen in Council under 17 & 18 Vict. c. 117, s. 65—Costs of appeal allowed and added to claim for principal and interest.
*Fraser* v. *Burgess*, 13 Moo. P. C. C. 314.

## COMMISSIONERS OF COMPENSATION UNDER SLAVERY ABOLITION ACT.

Lessee of slaves—Compensation under Slavery Abolition Act—Covenant in lease to refer to arbitration in case of loss by abridgment of labour or diminution of returns of lessee in consequence of Act of Parliament or Regulation of Colonial Legislature—Non-contemplation of Slavery Abolition Act.
*Gordon* v. *Bruce*, 2 Moo. P. C. C. 261.

## LEEWARD ISLANDS.

1. Advocates—Misconduct by—Power of colonial Courts to prevent from practising before them. (**Antigua.**)
   *In re Justices of Court of Common Pleas at Antigua*, 1 Knapp, 267.

2. Appeal—Lapse of time for asserting—Improper constitution of Court—Proceedings in equity, not at law—Special leave refused—Application under protest possible—Objection merely technical.
   *Ex parte Kensington*, 15 Moo. P. C. C. 209.

**LEEWARD ISLANDS**—*continued.*

3. Bill of exceptions to direction of judge sealed by him—Case removed to Court of Error—Affidavit that allegation in the bill incorrect and that bill omitted to set out material points of evidence—Corroboration by judge—Bill to be taken off file to be amended by judge's notes—Not necessary in British West Indies to sue out writ to oblige judge to confess or deny his seal to bill of exceptions. (**Antigua.**)

*Pownall* v. *Mascall*, 2 Knapp, 161.

4. Error—Writ of from Court of Common Pleas—Refusal of Court of Error to enter upon, on supposition they were not a properly constituted court—No appeal against such refusal to Queen in Council—Judgment from Court of Error necessary to give Judicial Committee jurisdiction. (**Antigua.**)

*In re Assignees of Manning*, 3 Moo. P. C. C. 154. See now *ante*, pp. 222 *seq.*

5. Legislative Assembly—No power of punishing contempt, though committed in its presence and by one of its members—No authority in colonial House of Assembly analogous to *lex et consuetudo parliamenti*, inherent in the two Houses of Parliament in the United Kingdom, or to power of a Court of justice which is a Court of record—No judicial functions in colonial House of Assembly—*Kielley* v. *Carson* (4 Moo. P. C. C. 63) and *Fenton* v. *Hampton* (11 Moo. P. C. C. 347) approved—Warrant of committal by Speaker of colonial House of Legislature ought to show on its face that the contempt was committed in presence of House. (**Dominica.**)

*Doyle* v. *Falconer*, L. R. 1 P. C. 328.

6. Piracy, goods taken by not transferable to third party—Ship previously engaged in—Sale of by public auction—No restitution. (**Virgin Islands.**)

*Reg.* v. *McCleverty*, 8 Moo. P. C. C., N. S., 43.

7. Ship—Purchase of American—Declaration by purchaser that he British subject—Provisional registry of ship as British—Ship seized and condemned for breach of Slave Trade Acts—Presumption of correctness of registry, flag, and pass of ship—Estoppel on owner—Liability of ship—2 & 3 Vict. c. 73—*Onus probandi*—Evidence—Pleading facts *noviter ad notitiam perventa.* (**Antigua.**)

*Dionissis* v. *Reg.*, 3 Moo. P. C. C., N. S., 181.

8. Will—Community of all property between the husband and wife, movable and immovable—Provision for dower and *preciput* or jointure—Power in case of children to accept or renounce com-

**LEEWARD ISLANDS**—*continued.*

munity—Issue four children, two of whom died in the lifetime of their father, one without issue, and the other having an only daughter to whom he bequeathed all his estate to be vested at 25 or marriage—Death of father shortly afterwards having by a codicil directed that the property bequeathed by his will to his second deceased son should go to his granddaughter in the same way as directed by her father's will—Suit by two surviving children against granddaughter to ascertain respective rights in real and personal estate of father—Decree by consent declaring them and granddaughter entitled to one-third share each—Widow not party—Will by granddaughter at 17 in favour of her guardians—Death shortly after—Suit by guardians to obtain possession of her third share of the personal estate of her grandfather—Resisted on ground that will obtained by undue influence, and she under 25—Representatives of widow of grandfather made parties—Her interests at the time of taking the decree by consent as well as at her death ascertained—Decision in favour of plaintiffs on re-hearing reversed on ground that it was contrary to the policy of the law that a guardian should benefit by the will of his ward—Decree not sustained on grounds that former decree by consent was binding on all the parties in that suit; and that the right of the parties therein declared could not now be questioned—Reference to ascertain interest of widow at time of taking the decree.

*Semble*, the Judicial Committee will not decide upon a testamentary instrument which appears not to have been admitted to probate, though registered in the island and not objected to in the Court below. **(Dominica.)**

*Moss* v. *Leatham*, 2 Moo. P. C. C. 73.

**WINDWARD ISLANDS.**

1. Bankruptcy, adjudication in, followed by certificate of discharge in England under bankrupt laws—Debt contracted in any part of world barred by—Authority of Insolvent Court at Barbadoes to inquire into frauds and offences committed against law of insolvent debtors in that island in proceeding previous to English adjudication—Insolvent again within jurisdiction—Island Act, No. 2341 of 1846—Imperial Statute, 12 & 13 Vict. c. 106, s. 200. **(Barbadoes.)**

*Gill* v. *Barron*, L. R. 2 P. C. 157.

**WINDWARD ISLANDS**—*continued.*

2. Consignee of West Indian estates—Consignee and mortgagee—General lien of—Exclusion of by express conduct. (**Tobago.**)

*Chambers* v. *Davidson* (*In re Leith's Estate*), L. R. 1 P. C. 296; 4 Moo. P. C. C., N. S., 158.

3. Consignee of W. intestates—Devise of estate and plantation to executors in trust to manage and apply profits—Advances by consignee of estate—Misappropriation by executor—Disallowance of advances not applied to benefit estate—Power of executor to bind estate—Duty of consignee to see to application of advances—Rights of consignees of West Indian estates—Statute of Frauds must be pleaded. (**Barbadoes.**)

*Daniel* v. *Trotman*, 1 Moo. P. C. C., N. S., 123.

4. Costs of mortgage of property in West Indies—To be raised together with the mortgage money by a sale of the mortgage property, in case of non-payment by the respondents. (**Barbadoes.**)

*Henry* v. *Byar*, 1 Knapp, 388.

5. Evidence—Entry of payment of money in books of Provost Marshal of St. Vincent by creditor indebted to the same parties upon several judgments—Not binding notice of general appropriation of amount against receipt previously taken expressing on what particular account. (**St. Vincent.**)

*Fraser* v. *Birch*, 3 Knapp, 380.

6. Extension of Imperial law to colonies—Scotch Sequestration Act, 2 & 3 Vict. c. 41—Extension of to the colonies—Act of Tobago Legislature declaring common law and statutes of England, so far as applicable, in force in the island—*Quære* whether Interpleader Act, 1 & 2 Will. 4, c. 58, extends to Tobago—If so, does appeal from judgment on feigned issue lie to Queen in Council? (**Tobago.**)

*Colonial Bank* v. *Warden*, 5 Moo. P. C. C. 340.

7. Family name, property in—Old French law—Name in connection with trade or business—Fraud. (**St. Lucia.**)

*Du Boulay* v. *Du Boulay*, L. R. 2 P. C. 430.

8. Fire Insurance—Option of insurers to terminate policy on giving notice—Construction of condition—Practice—Costs.

*Sun Fire Office* v *Hart*, L. R. 14 App. 98.

9. Judge—Memorial by House of Assembly to Queen in Council complaining of illegal and oppressive conduct of—Lapse of time since acts charged except one, erroneous and improper, but in

**WINDWARD ISLANDS**—*continued.*

execution of duty—Refusal by Judicial Committee to advise removal of Chief Justice. (**Grenada.**)

*Representatives of the Island of Grenada* v. *Sanderson*, 6 Moo. P. C. C. 38.

10. Judge—Power of Chief Justice of Supreme Court of Grenada alone and without consent of the Assistant Justices to issue rule altering practice of court—Rules of Court by Chief Justice prohibiting Assistant Justices from doing any act in Chambers except in the absence from the island or illness of Chief Justice—Illegal, ordered to be rescinded. (**Grenada.**)

*In re Wells*, 3 Moo. P. C. C. 216.

11. Judge—Action for trespass and false imprisonment against persons exercising office of Judges of Royal Court of St. Lucia under commissions from the Governor irregularly issued. (**St. Lucia.**)

*Gahan* v. *Lafitte*, 3 Moo. P. C. C. 382.

12. Judge—Order in nature of a *mandamus* not issuable by Judicial Committee to the Judges of the Common Pleas of Tobago to enter up judgment after verdict, though such judgment ought to have been entered up as of course. (**Tobago.**)

*In re Muir*, 3 Moo. P. C. C. 150.

13. Mortgage of property in West Indies, covenant in to consign produce to mortgagee—Not usurious—Such mortgagee may charge commission on sale of the produce—Assignment by mortgagee in possession—Supplies and contingencies due before assignment—Payment of by assignee—Adding to mortgage debt and charging against mortgaged premises. (**St. Vincent.**)

*Sayers* v. *Whitfield*, 1 Knapp, 133.

But see *Leith* v. *Irving*, 1 My. & K. p. 292.

14. Mortgage, judgment on, in 1827—Death of mortgagor—Sale of estate—Registration of judgment against B. and succession in 1830, not against purchaser of estate—Transfer of part of mortgage claim—Effect of claim—Effect of registration of judgment—Domicile *de facto* and *de jure*. (**St. Lucia.**)

*Beaucé* v. *Muter*, 5 Moo. P. C. C. 69.

15. Partnership—Contract by one partner believed to be entered into on behalf of whole firm—Supply of articles to fulfil—Disclaimer of contract by rest of firm—Liability of firm—Account current—No evidence of specific appropriation of sums accounted for as received. (**Grenada.**)

*Smith* v. *Ure*, 2 Knapp, 188.

**WINDWARD ISLANDS—continued.**

19. Pending—action or matter—Immunities—Predatory averment—Improper. (Grenada.)

*Simmons* v. *Hamel*, L. R. 4 App. 156.

20. Principal and surety—Judicial sale of real estate to attorney for W. and wife resident in France—D. surety for payment of second instalment—Execution of deeds by trustee resident in colony—Execution of sale by two trustees resident in England—Default in payment of second instalment—Action against D. as surety—Sale in fact to W. only—Ineffectual and void—Release of D. (St. Lucia.)

*De Freitas* v. *Goodman*, 4 Moo. P. C. C. 406.

18. Private animal in paper purporting to dispose of testator's real and personal property and subjecting them both to payment of his debts and funeral expenses in testator's handwriting, sealed and signed by himself but not attested, although attestation clause subjoined—Presumption against final intention that writing to be last will. (St. Vincent.)

*Douglas* v. *Smith*, 2 Knapp, 1.

19. Registering deeds, &c. in St. Lucia—Ordinance for regulating form and manner of act. 3—Registration of mortgage and assignment of part of estate charged and apportioned by previous act of liquidation—Right of party claiming under to come in *pari passu* with parties whose title registered under original act of liquidation—Ordinance passed in pursuance of Order in Council not altered or disapproved by Her Majesty in Council, though seemingly more extensive than contemplated by the Order, not void for excess, but considered as duly authorised by Order and taken in conjunction with it. (St. Lucia.)

*Inglis* v. *De Barnard*, 3 Moo. P. C. C. 425.

20. Slave trade abolition—Seizure and condemnation of Portuguese vessel under 2 & 3 Vict. c. 73 affirmed on appeal by Judicial Committee—Proceedings in what form. (Barbadoes.)

*Guimaraens* v. *Preston*, 4 Moo. P. C. C. 167.

21. Vendor and purchaser—Agreement for payment of purchase-money of estate by yearly instalments with interest—Four last to be retained by purchaser as indemnity until good title made—Bill for specific performance—Vendor not entitled to compound interest—Not prepared to make good title—Decree of court below affirmed with costs, though varied in matter improperly made the subject of appeal. (St. Vincent.)

*Stratton* v. *Symon*, 2 Moo. P. C. C. 125.

**WINDWARD ISLANDS**—*continued.*

22. Will—Specialty debt—Debtor appointed executor by creditor—Devise by debtor of real estates on trust for sale subject to debts—5 Geo. 2, c. 7, s. 4.—Real estates in West Indies legal assets—Competency of testator to change legal distribution of assets. **(Barbadoes.)**

*Turner* v. *Cox*, 8 Moo. P. C. C. 288.

**TRINIDAD.**

1. Bill of sale—Growing crops—Registration—Ordinance No. 15 of 1884—Interpretation of s. 10—"Nothing contained in this Ordinance."

*Tennant* v. *Howatson*, L. R. 13 App. 489.

2. Cognovits—Practice as to—Ordinance No. 5 of 1845—Spanish laws of 1534 and 1560.

*Colonial Bank* v. *Cazabon*, 7 Moo. P. C. C. 412.

3. Governor—Plea to action of debt brought in the Court of First Instance in the Island of Trinidad that defendant was at the commencement of the action, and still was, Lieutenant-Governor of the island, and as such not liable to be sued—Overruled.

*Semble.*—Though judgment given against such Governor, his person not liable to be taken in execution while on service.

*Hill* v. *Bigge*, 3 Moo. P. C. C. 465.

4. Inheritance—*Status* of children born before marriage—Ordinance No. 24 of 1845, s. 5, and No. 7 of 1858, s. 7.

*Escallier* v. *Escallier*, L. R. 10 App. 312.

5. Mortgagee entitled to consignments and to furnish supplies to estate—Suit by against purchaser of estate for balance of account—Claim of heirs-at-law of vendor, original mortgagor, to preference in respect of purchase-money—Claim refused.

*Brown* v. *Anderson*, 2 Moo. P. C. C. 249.

6. Treasurer of Trinidad—No preferential claim against the estate of by Crown for moneys not forming part of the public revenue of the island, though received by him under order of Court of Audience from the Escribanos or Registrars of the courts.

*Wildes* v. *Attorney-General of Trinidad*, 3 Moo. P. C. C. 200.

**TRINIDAD AND TOBAGO.**

Practice—Demurrer overruled—Merits not disposed of—Time allowed for trial not to be abridged so as to preclude fair hearing—Non-appearance of plaintiff—Defendant entitled to judgment

**TRINIDAD AND TOBAGO—continued.**

dismissing action, but irregular for judge to take evidence and adjudicate thereon—Orders 25, r. 12; 36, r. 18; 57, r. 6.

*Pollard* v. *Harvapin*, L. R. 1891 A. C. 450.

**BERMUDA.**

1. Provost Marshal, right of to account of rents and profits of lands and other moneys received by Secretary of island.

*Kennedy* v. *Tyrrell*, 6 Moo. P. C. C. 449.

2. Will—"Estate," meaning of—Realty as well as personalty, unless clear contrary intent expressed.

*Mayor of Hamilton* v. *Hodsdon*, 6 Moo. P. C. C. 76.

3. Writ *de ri laicâ removendâ*—Issue of from Common Law side of Court of Chancery in England disused—Same relief by injunction in case of obstruction to induction of party to benefice—Bermuda Act of 1814, s. 29—Jurisdiction of Court of Chancery of Islands to "examine, hear, judge, determine, and decree, all matters, causes and things whatever, as fully and amply to all intents and purposes whatsoever as the High Court of Chancery in England may or can do"—Power to issue writ *de ri laicâ removendâ*.

*Ex parte Jenkins*, L. R. 2 P. C. 258.

**BAHAMAS.**

1. Foreign Enlistment Act, 59 Geo. 3, c. 69, s. 7—Violation of how evidenced.

*Reg.* v. *Carlin*, 6 Moo. P. C. C., N. S., 509.

2. Salvage—Never more than moiety—Derelict distinguished from salvage—Decree below of 76 per cent. reduced to 50 per cent.—Decree below carried into effect pending appeal on security being given to abide event of appeal.

*Gore* v. *Bethel*, 12 Moo. P. C. C. 189.

**BRITISH GUIANA.** (Including cases from the old colonies, Demerara and Berbice.)

1. Administration—Suit for account of testator's estate—Error in mode of taking accounts—Interest.

*Jerningham* v. *Administrator-General of Demerara*, 15 Moo. P. C. C. 529.

2. Bankruptcy in England—Suit in colonial court at Demerara—Plaintiffs affected with notice of bankruptcy, but not having proved—Certificate of the bankruptcy—Discharge under.

*Odwin* v. *Forbes*, Buck, 57.

**BRITISH GUIANA**—*continued.*

3. Bill of exchange—Drawn in one country, payable in another—Dishonour—Drawer liable according to *lex loci contractus*—Bill drawn generally—Drawer, acceptor, indorsers liable according to laws of countries where drawing, acceptance, and indorsement respectively take place—Principle of compensation in Civil Law adopted in Dutch-Roman law applies to bills of exchange.

*Allen* v. *Kemble*, 6 Moo. P. C. C. 314.

4. Contempt of Court—Publishing in journal comments on administration of justice—Imprisonment for six months—Liberty to judges of court to object to competency of appeal at hearing.

*In re McDermott*, L. R. 1 P. C. 260.

5. Contempt of Court—Supreme Court of Civil Justice—Court of Record—Power to commit for contempt—Exercise of power discretionary—Not subject of appeal.

*MacDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341.

6. Contract—Agreement made in Scotland for discharge of mortgage of lands in Demerara by bills payable in Scotland—Scotch contract—Interpretation according to law of Scotland.

*Campbell* v. *Dent*, 2 Moo. P. C. C. 292.

7. Creditors—Decree of *perpetuum silentium* against creditors of a person deceased who have not appeared and put in their claims under an edictal summons for that purpose—Not bar to action of creditor who has not so appeared against the executor of such a person.

*Freyhaus* v. *Heirs of Forbes*, 1 Knapp. 117.

8. *Crim. con.*, action of lies by Dutch law in British Guiana, and is recognised by Ordinances of Colony Nos. 19 & 29 of 1846.

*Norton* v. *Spooner*, 9 Moo. P. C. C. 103.

9. Donation—Deed of in favour of illegitimate children, minors—Acceptance by donor on donees' behalf—Sentence of willing condemnation for performance of deed—Subsequent marriage of donor—Death of, leaving widow and issue—Death intestate and unmarried of one of illegitimate children—Claim by mother against donor's estate—Acceptance of donor on behalf of donees validating donation—Donation not revoked by subsequent marriage and birth of lawful children—Technical objections not taken in Court below not entertained where mere matter of form not affecting substance of controversy.

*Board of Orphans* v. *Kraegelius*, 9 Moo. P. C. C. 438.

**BRITISH GUIANA—continued.**

11. Executors—Colony governed by Dutch law—Executors taking no beneficial interest under will do not, by entering into possession or assisting property of testator, make themselves liable, as heirs in, to payment of all his debts—Paying for schooling and maintenance of illegitimate children of testator, making small advances to their mother, and parting with boat out of repair to holder of unpaid note of hand of testator originally given in payment for the boat, not sufficient dealings with estate to constitute an adiation.

*Freyhams* v. *Cramer*, 1 Knapp, 107.

12. Executor, power of substituting—Construction of clause in will giving.

*Furness* v. *Administrator-General of British Guiana*, L. R. 14 App. 681.

12. Foreign judgments—Decree of Court below for money due on reversed—Judgments improperly obtained—Certificate of deputy Secretary in St. Vincent's that he had searched Secretary's office, and could find no warrant of attorney to confess judgment in an action, received as evidence of the non-existence of such a power, having been admitted as such in the Court below—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless the plaintiff can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.

*Semble.*—Objections cannot be made to a decree at the hearing before the Privy Council that have not been made in the Court below.

*Frankland* v. *M'Gusty*, 1 Knapp, 274.

13. Governor of colony—Sovereign authority not delegated to—Act done by unauthorised by commission or instructions—Not equivalent to such act done by Crown—Invalidity of—Vendue Master of Berbice—Commission of 5 per cent. on sales in colony—No power in Governor to reduce.

*Semble.*—The non-objection on the part of the Crown to a notification or proclamation issued by a Governor of one of its ceded colonies does not imply that the Governor had authority in the subject of the proclamation; nor will its non-interference render the proclamation valid on the ground of acquiescence.

*Cameron* v. *Kyte*, 3 Knapp, 332.

14. Holland's currency—Claim in Demerara for sum of money—Hol-

**BRITISH GUIANA**—*continued.*

land's currency held to mean the currency of the colony, which called Holland's currency.

*Hugenholtz* v. *Watson*, 1 Knapp, 170. See *post*, 18.

15. Interdict against selling proceeds of plantation—Discharge of—Damages, rejection of claim for overruled by Judicial Committee.

*McTurk* v. *Bent*, 4 Moo. P. C. C. 213.

16. Land, sale of—Servitude—Immovable property—Judicial Act—Roman-Dutch law.

*Steele* v. *Thompson*, 13 Moo. P. C. C. 280.

17. Mortgage—Dutch law—Satisfaction of principal debt—Extinguishment of mortgage or pledge.

*Wilkinson* v. *Simpson*, 2 Moo. P. C. C. 275.

18. Mortgage of lands—Purchase of for smaller sum—Priority of purchasers to second mortgage — *Lex Anastasiana* —Holland's currency, meaning of—Clause for increasing interest.

*Macrae* v. *Goodman*, 5 Moo. P. C. C. 315. See *ante*, 14.

19. Plantation in colony, management of—Executrix and devisee in trust in England—"Without power of assumption, substitution, and surrogation"—Roman-Dutch law—Appointment of attorney—English law.

*Stuart* v. *Norton*, 14 Moo. P. C. C. 17.

20. Practice—Execution sale—Claim declared preferential—Appeals—Pending appeals petition filed in British Guiana praying Court to proceed to judgment of *præ et concurrentiæ* and to award the moneys to be paid *sub cautione de restituendo* — Refused—Application *ex parte* to Her Majesty in Council to reverse refusal, and for order upon Judges in British Guiana to entertain petitioner's application—Not entertained.

*In re Butts*, 4 Moo. P. C. C. 92.

21. Practice—Mandament of penal interdict not granted to restrain execution of sentence on grounds that might have been brought forward at hearing of cause—In appeal against execution of sentence appellant cannot enter into merits—By such appeal justice of original sentence admitted.

*Nieuwerkerk* v. *Reynolds*, 1 Knapp, 151.

22. Practice—Order of Judicial Committee on petition for a mandament of substantial relief, *restitutio in integrum*, and *committimus* to Judge of Supreme Court of British Guiana.

*In re Butts*, 3 Moo. P. C. C. 441.

**BRITISH GUIANA—continued.**

23. **Promissory note—Joint action by holder of against maker and indorsee—Notice of dishonour to indorsee—Dutch-Roman law.**
*Chapman* v. *British Guiana Bank*, 6 Moo. P. C. C. 23.

24. **Slaves—Hire of—Abatement in rent for allowed in respect of three manumitted under Slavery Abolition Act—Refused for loss from diminution in hours of work of apprenticed labourers—Counterclaim before Commissioners of Compensation.**
*Albouy* v. *Retemeyer*, 3 Moo. P. C. C. 452.

25. **Vendor and purchaser—Purchase-money of plantation secured by bills of exchange drawn on houses in England—Estate hypothecated as further security for purchase-money due on bills with interest and damages—Mortgage to be a first and preferent charge—Some of bills protested and returned to colony—Plantation sold under execution sale—Preferential claim of vendor for principal and interest due upon protested bills—Not for damages consequent thereon—Interlocutory order referring matters of account to sworn accountant of Court of Civil Justice in Berbice with instructions thereon, not such a definitive sentence as by rules of Civil Law require specific appeal; may be questioned on general appeal from final sentence of Court.**
*Cameron* v. *Fraser*, 4 Moo. P. C. C. 1.

26. Vendor and purchaser—Execution sale of real estate—Purchase—Inability to get transport from Supreme Court—No title—Annulment of execution sale—Return of purchase-money.
*Forte* v. *Beete*, 9 Moo. P. C. C. 336.

27. Will—Devise of property, real and personal, after death of testator's wife, to be sold, money arising therefrom to be immediately deposited in Bank of England, interest to be paid to testator's daughter during her life—Principal wholly at her disposal at her death—Daughter married woman—Husband's creditors not able in colony governed by Dutch law to take it in execution and sell it—Not incumbent on an heir to accept his legitim or *pars legitima* of inheritance for benefit of creditors.
*Simpson* v. *Forrester*, 1 Knapp, 231.

# EASTERN COLONIES.

## HONG KONG.

1. Bankruptcy Ordinance, 1864, arts. 163, 165, 167, 168, 169—Fraudulent preference—Rights of trustees under art. 165.
   *Benecke* v. *Whittall*, L. R. 2 App. 602.

2. Bankruptcy in colony of firm—Power of attorney to petition Court for adjudication—Act of bankruptcy—Assignment to trustee—Bankruptcy in London of partner—Consequent joint adjudication in colony against all partners—Competency of partner in London to dispute joint adjudication—Costs—Insufficiency among sets of respondents—Rateable distribution.
   *Lyall* v. *Jardine*, L. R. 3 P. C. 318.

3. Bill of exchange—Restrictive indorsement—Subsequent indorsee's right of action for benefit of restraining indorser or *cestui que trust*.
   *Murrow* v. *Stuart*, 8 Moo. P. C. C. 267.

4. Bill of lading—Indorsement of, forbearance or release of antecedent claim not good consideration for—Stoppage *in transitu*—*Transitus* till when—Words in deed capable of two constructions taken against party using them to work wrong—Position as to equities.
   *Rodger* v. *Comptoir d'Escompte de Paris*, L. R. 2 P. C. 393. Dissented from in *Leask* v. *Scott*, L. R. 2 Q. B. D. 376.

5. Bill of lading—"Or order or assigns," omission of—Indorsement—Title to goods.
   *Henderson* v. *Comptoir d'Escompte de Paris*, L. R. 5 P. C. 253; 42 L. J. P. C. 60.

6. Bill of lading—Secret trust—Assignment without notice—Consideration—Rights of assignee.
   *Chartered Bank of India, Australia, and China* v. *Henderson*, L. R. 5 P. C. 501.

7. Collision—Damages—Work of injured vessel done by substituted vessel of same owners at defendants' expense—Demurrage disallowed—Expenses of detention—Reference to Registrar of Her Majesty in Ecclesiastical and Maritime Appeals instead of to Registrar of Court below.
   *The City of Peking*, L. R. 15 App. 438.

8. Collision—Exceptional current—Liability—Evidence of negligence

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—Vessel under steam running down ship at her moorings in broad daylight.

*The City of Peking*, L. R. 14 App. 40.

9. Contempt of Court—Criminal offence—No person punishable for unless specific offence charged distinctly stated, and opportunity given of answering—Barrister engaged in professional duty before Supreme Court, without notice of alleged contempt or rule to show cause, without being heard in defence, by order of Court fined and adjudged to have been guilty of several contempts of Court in disrespectfully addressing the Chief Justice while conducting a cause—Order, upon a reference by the Crown to Judicial Committee under the statute 3 & 4 Will. 4, c. 41, s. 4, set aside, and fine ordered to be remitted, first, on ground that the order was bad, inasmuch as the offences charged were not of themselves such contempts of Court as legally constituted an offence; secondly, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard before passing sentence.

*In re Pollard*, L. R. 2 P. C. 106.

10. Extradition—Treaties of Nankin and Tientsin—Ordinance of Hong Kong, No. 2, 1850—"Crime or offence against the law of China"—Piracy—*Habeas corpus* Act, 31 Car. 2, c. 2, s. 6—Recommitting for same offence.[1]

*Attorney-General of Hong Kong* v. *Kwok-a-sing*, L. R. 5 P. C. 179; 42 L. J. P. C. 64.

11. Partnership—Debt to—Agreement with member of partnership by third party to pay debt—Right of action by member of partnership in own name against third party.

*Agacio* v. *Forbes*, 14 Moo. P. C. C. 160.

12. Reversing judgment, Order in Council, construction of—Repayment of amount of judgment—Interest—Restitution—Costs—Appeal from Hong Kong—General regulations of 1845—Practice—Printed cases dispensed with.

*Rodger* v. *Comptoir d'Escompte de Paris*, L. R. 3 P. C. 465.

13. Ship, title to—Jurisdiction of Vice-Admiralty Court—Non-registration of ship—Effect on subsequent *bonâ fide* purchaser—Master's authority—Sale of ship—Strong necessity—Cost of

[1] As to the definition of piracy in this case, *vide* Stephen's Hist. of the Criminal Law, ii. 27.

**HONG KONG**—*continued.*

repairs—Delay of owner—Acquiescence in sale—Disobedience to monition to pay taxed costs of appellants—Sequestration of real and personal estate.

*Lapraik* v. *Burrows, The Australia*, 13 Moo. P. C. C. 132.

14. Shipping—Consignee of goods—Right to action against shipowner for non-delivery—Collision at sea—Damage to cargo—Duty of master—Ordinances constituting Supreme Court of Hong Kong—Practice and proceedings to be same as in Courts in England—No Court of Appeal in colony—Appeal to England against final decree, judgment, or sentence, or rule or order in civil suit having final and definitive effect—Appeal from verdict of jury to England—Irregularity of—Proper course to move for new trial and appeal from refusal of—Fatal objection to right of appeal—Application to quash.

*Tronson* v. *Dent*, 8 Moo. P. C. C. 419.

**PENANG.**

1. Straits Settlements—Ordinance 8 of 1873, ss. 12 (sub-s. 2) and 26—Stamp—Insufficient cancellation—Additional stamp by way of penalty—Admissibility in evidence.

*Vernon Allen* v. *Meera Pullay*, L. R. 7 App. 172.

2. Will—Gift of residue to executors absolute or in trust—Uncertainty—Perpetuity—Law of England in Penang—Royal Charters 1807, 1826, 1855—English Statutes in nature inapplicable to Penang—*Mayor of Lyons* v. *East India Co.*—Appeal to H. M.—Ordinance No. 5 of 1868—Present Supreme Court of Straits Settlements.

*Yeap Cheah Neo* v. *Ong Cheng Neo*, L. R. 6 P. C. 381.

**STRAITS SETTLEMENTS.**

1. Collision—One vessel navigated recklessly—Other vessel committing venial error but infringing unnecessarily regulation for preventing collisions at sea—Both held to blame.

*Ocean Steamship Co.* v. *Apcar, The Arratoon Apcar*, L. R. 15 App. 37.

2. Crown, liability of in tort—Crown Suits Ordinance of 1876, s. 18, sub-s. 2—Right of access to sea.

*Attorney-General of Straits Settlements* v. *Wemyss*, L. R. 13 App. 192.

**STRAITS SETTLEMENTS**—*continued.*

3. Grant to A. and his heirs and successors—Assignment of by A.—Non-enurability beyond A.'s life.

*Chitty* v. *Sultan Allie Iskander Shah*, L. R. 8 App. 751.

**CEYLON.**

1. Bottomry bond—Hypothecation of cargo—Duty of master—Communication with owners.

*Kleinwort & Co.* v. *Cassa Marittima of Genoa*, L. R. 2 App. 156.

2. Charter of Justice (1833) cl. 23—District courts—Appeal from to Supreme Court by cl. 36—Power of Supreme Court by Ordinance No. 11 of 1843, s. 14, to review proceedings of Police Courts—Power to District Judge or Police Magistrate by s. 7 to enforce recognisance taken before Justice of Peace—Forfeiture by Police Magistrate of sureties' recognisances—Review by Supreme Court—Meaning of "forthwith" in notice to party out on bail to appear.

*Reg.* v. *Price*, 8 Moo. P. C. C. 203.

3. Crown, right of subject to sue the—Right of set-off between the Crown and a subject—Roman-Dutch law in Ceylon.

*Hettihewage Siman Appu* v. *Queen's Advocate*, L. R. 9 App. 571. (See observations on this case in *Farnell* v. *Bowman*, L. R. 12 App. p. 650.)

4. Execution—Sale in of immovable property—Application by judgment debtor to set aside—Rule as to thirty days' limit—Absence of judgment debtor from Ceylon—Rule imperative—Ceylon Ordinance No. 4 of 1867, ss. 53, 54.

*Sillery* v. *Harmanis*, L. R. 8 App. 99.

5. Executor—Bond or mortgage by order of Court of testator's real estate for expenses of cultivation—Fiscal sale on default in payment by mortgagor—Repudiation by co-executor and devisee in trust on allegation of collusion with purchaser and non-joinder of co-executor in mortgage—Supreme Court, court both of law and equity—Suit maintainable against executor or administrator in representative capacity for moneys advanced for purposes of estate he represents—Judgment and execution against testator's or intestate's estate—Effect of unauthorised dealings with estate by representative or person benefiting by and party to such breach of trust—Powers of executor by Roman-Dutch law in force in Ceylon—Over immovable as well as movable property.

*Gavin* v. *Hadden*, L. R. 3 P. C. 707.

**CEYLON**—*continued.*

6. Land—Adverse possession of—Acts of ownership—Ordinances No. 8 of 1834, No. 22 of 1871.
   *Clark* v. *Elphinstone*, L. R. 6 App. 164.

7. Land—Fiscal sale of by mortgagee—Previous sale by mortgagor—Rights of purchaser from mortgagor.
   *Murugaser Marimuttu* v. *De Soysa*, L. R. (1891) A. C. 69.

8. Land—Recovery of—English parties—Instruments in English form—Rights governed by English law—Roman-Dutch law in Ceylon—Deed affecting immovable property—Execution in Ceylon.
   *Lindsay* v. *Oriental Bank Corporation at Colombo*, 13 Moo. P. C. C. 401.

9. Lien—Civil law—Movables—Possession not necessary—*Bonâ fide* purchaser without notice—Modification of rule by Roman-Dutch law—Goods not followed into hands of transferee without value—Inaccurate reference to Voet in Burge's Commentaries, iii. 572.
   *Tatham* v. *Andree*, 1 Moo. P. C. C., N. S., 386.

10. Marriage, presumption of—*Onus probandi*—Roman-Dutch law.
    *Sastry Velaider Aronegary* v. *Sembecutty Vaigalie*, L. R. 6 App. 364.

11. Practice—Carrying out judgment of Judicial Committee—Proceedings according to English law—Application of Roman-Dutch law—Law of procedure law of forum.
    *Lindsay* v. *Duff*, 15 Moo. P. C. C. 452.

12. Promissory note—Presentation, time for—Payable on demand—Payment not contemplated at any specific date—Continuing security.
    *Chartered Mercantile Bank of India, London, and China* v. *Dickson*, L. R. 3 P. C. 574; 8 Moo. P. C. C., N. S., 1.

13. Sale—Conditions read at auction—Conditions appended to memorandum of purchase—Right to sue on latter—Damages—Wrongful retaking of goods sold—Rescission of contract.
    *Page* v. *Eduljee*, 3 Moo. P. C. C., N. S., 499.

14. Shipping—Charterparty—Delivery of cargo over ship's side—Payment of freight on delivery.
    *Black* v. *Rose*, 2 Moo. P. C. C., N. S., 277.

15. Will—Mutual will—Construction of by Roman-Dutch law—Gift to class—Gift to husband and wife and another.
    *Dias* v. *De Livera*, L. R. 5 App. 123.

## MAURITIUS.

1. Alien—*Status* of resident in Mauritius determined by laws of England—Rights and liabilities incidental to such *status* determined by law of colony.

*Code civile* in Mauritius previous to surrender to British Crown, art. 13—Domicile of alien only obtained "*par l'autorisation du Gouvernement*"—Express formal authority of the Government, not merely tacit or permissive acquiescence, for residence of alien friend in Island.

Alien friend by order of Governor and Colonial Council deported and directed to quit Island within a month—Order consistent with law of France and strictly legal, notwithstanding party so deported had enjoyed privileges and exercised rights of person duly domiciled in Island.

*In re Henry Adam*, 1 Moo. P. C. C. 460.

2. Bankruptcy, validity of adjudication of—Mauritius Ordinance No. 33 of 1853, ss. 40, 43, 50.

*Oriental Bank Corporation* v. *Richer*, L. R. 9 App. 413.

3. Bastard—*Code civile*, arts. 765, 766—*Des successions irrégulières*—Descendants, meaning of—*Postérité*—Claim of Government to property—General principles by which Courts to be governed in construing *Code civile* as derived from decisions of *Cour de cassation* and leading French text-writers.

*Her Majesty's Procureur and Advocate-General* v. *Bruneau*, L. R. 1 P. C. 169.

4. Company—Insurance Company—Registration in Supreme Court of Calcutta—Shareholder resident in Mauritius—New Company to take business at expiration of limit of old Company's time—Verbal authority to place name on deed—Liability on insolvency of company.

Certified copies of orders of Supreme Court of Calcutta—No proof of official seals or signatures—Admissibility in evidence—14 & 15 Vict. c. 99.

*Leishman* v. *Cochrane*, 1 Moo. P. C. C., N. S., 315.

5. *Conseil de famille*—"*Contredits*" to *ordre* or distribution of sale price of estate—Mortgage of subsequent date—*Conseil de famille*, homologation of—*Code civile*, art. 458.

*Chapman* v. *Oriental Bank Corporation*, 2 Moo. P. C. C., N. S., 463.

6. Consular Court of Madagascar, powers of Judge of—Immunity of Judge from action for damage though Court not of record—Madagascar Order in Council, 1869.

*Haggard* v. *Pélicier*, L. R. (1892) A. C. 61.

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7. Contract made in one country to be performed in another country —Interpretation of—*Lex loci contractus* — Carrier — Special agreement—Indorsement on ticket.
*Peninsular and Oriental Steam Navigation Co.* v. *Shand*, 3 Moo. P. C. C., N. S., 272.

8. *Faillite, ouverture de*—Refusal to pay, unless followed by cessation of payment, not sufficient to establish under art. 441 of *Code de commerce*—Suspension of payment not necessarily a cessation within terms of that article—General stoppage of payments—Carrying back *ouverture* to time of antecedent refusal.
House in Mauritius in co-partnership with one in London—Payments suspended in consequence of stoppage of the London house, though not till some time after arrival of intelligence of such stoppage—Date of *ouverture de la faillite* not carried back to failure of London house—Fixed from period of actual stoppage of payments in the island.
*D'Epinay* v. *Cockerell*, 1 Moo. P. C. C. 103.

9. Judgment, registered specific charge on debtor's real estate with priority of date—Non-domiciled owner of real estate—Service of process on agent not authorised to accept or to elect acceptance of domicile for principals—Jurisdiction of Court.
French Law as settled by *Code civile* in force in Mauritius.
*Lang* v. *Reid*, 12 Moo. P. C. C. 72.

10. Judgment creditors claiming under their debtor bound by his acts —Civil Procedure Code, art. 474—*Tierce opposition.*
*Martin* v. *Boulanger*, L. R. 8 App. 296.

11. Mortgage, second—Priority of advances.
*Diore* v. *Lachambre*, 37 L. T., N. S., 250.

12. Practice—Court below at Mauritius sole judge of sufficiency of security to be given for due prosecution of appeal—Refusal by that Court to allow appeal on account of insufficiency of security tendered—Refusal supported by Privy Council.
*Cambernon* v. *Egroignard*, 1 Knapp, 251.

13. Principal and agent—*Code civile*, art. 1384—Responsibility of *commettant* for negligence of *préposé*—Meaning of *préposé*—Liability for fire caused by working of labourers clearing land.
*Sérandat* v. *Saïsse*, L. R. 1 P. C. 152.

14. Sale by licitation—Privilege of *copartageants*—*Hypothèques*—Priority—*Code Napoléon.*
*Courtaux* v. *Hewetson*, L. R. 6 P. C. 407.

15. Sale by licitation of British ship—Registration of ship—Merchant

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Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 55, 58—Purchaser under judicial sale of beneficial interest in British ship—Not entitled to registration as owner—Discharge of mortgages, entries of.

*Chasteauneuf* v. *Capeyron*, L. R. 7 App. 127.

16. Sale of movables—Delivery on credit—Default in payment—Recovery of by unpaid vendor—Increase in value in purchaser's possession—Suit of "*tierce opposition*" explained.

*Rochecouste* v. *Dupont*, 2 Moo. P. C. C., N. S., 195.

17. Will made in *mystique* or secret form according to *Code civile*—Bequests to natural children—Subsequent legitimation of—*Quotité disponible*—Election.

*Lagesse* v. *Lagesse*, L. R. 4 P. C. 553.

## CHANNEL ISLANDS.

### JERSEY.

1. Appeal, special leave to—Improper concealment of material facts in petition for—Judge's notes of evidence when not to be laid before Court of Appeal.

*Baudains, ex parte*, L. R. 13 App. 832.

2. Bailiff cannot appoint third *dénonciateur* to Royal Court.

*Le Gallais* v. *De Veulle*, 11 Moo. P. C. C. 72.

3. Bar of Royal Court—Limit of number of advocates to six—Right of nomination of advocate in Royal Court in bailiff.

*D'Allain* v. *Le Breton*, 11 Moo. P. C. C. 64.

4. Bar of *Cour Royale*—Act of States opening—Confirmation by Queen in Council—Compensation to former advocates refused.

*The Jersey Bar*, 13 Moo. P. C. C. 263.

5. Bill of exchange drawn in Jersey, payable in London three days after sight or order—Presentment thirty-seven days after date—Foreign bill—Reasonable time of presentment.

*Godfray* v. *Coulman*, 13 Moo. P. C. C. 11.

6. *Clameur de haro*—Criminal as well as civil process—Attorney-General of Island necessary party in all stages—Appeal abated by death of respondent revived by making deceased's heir respondent.

*Ahier* v. *Westaway*, 9 Moo. P. C. C. 395.

7. Clergyman—Jurisdiction of Ecclesiastical Court of Jersey to entertain suit against—Canons 17 and 46 "Scandal against

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morality and religion, and especially against the Established Church, of which he is a minister"—Criminal offence—Canon 21—Dean to ask advice and opinion of ministers present—Minister's assessors have no voice in the decision of the Court—Appeal abated by death of Dean of Jersey pending appeal, revived in name of his successor, though not prosecuted within time required by 57th canon.

*Dean of Jersey* v. *Rector of* ——, 3 Moo. P. C. C. 229.

8. Contract for work between H. and F.—Transfer of by H. to L.—Assent of F.—Bankruptcy of H.—Right of L. to payment by F.—*Acte* of Royal Court calling in experts to view of work.

*Falle* v. *Le Sueur*, 12 Moo. P. C. C. 501.

9. Court House—No power in Royal Court to order alterations directed by them to be paid for out of Crown Revenues.

*Attorney-General of Jersey* v. *Le Capelain*, 4 Moo. P. C. C. 37.

10. Criminal cases—Special leave to appeal—Order in Council of 13 May, 1572—Order of Court directing defendant to plead—Definitive sentence.

*Esnouf* v. *Attorney-General for Jersey*, L. R. 8 App. 304.

11. Crown fiefs—Rents of—Liability of Prévôt for—No right to list of contributors from Crown—Documents not before Court below—Production of at hearing.

*Attorney-General and Receiver-General for Jersey* v. *Le Moignan*, L. R. (1892) A. C. 402.

12. *Curatelle*—Person—Property.

*Ex parte Nicolle*, L. R. 5 App. 346.

13. Custody of children—Provisional order giving it to mother pending separation suit—Appeal without prejudice to objection in Royal Court.

*Belson* v. *Belson*, 7 Moo. P. C. C. 30.

14. Debtor and creditor—Rate of exchange—Recovery of money received under specific authority, to be applied in particular manner—Rate at time and place specified where default in payment made, not at time judgment for recovery of sum recorded.

*Bertram* v. *Duhamel*, 2 Moo. P. C. C. 212.

15. Debtor and creditor—*Loi sur arrangements entre débiteurs et leurs créanciers*—Royal Court of Jersey—Leave—*Doléance.*

*Crédit Foncier* v. *Amy*, *Baily* v. *Amy*, L. R. 6 P. C. 146.

16. Defamation — Action for — Representation by defendants to

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plaintiff's employer in good faith in the course of their business —Damages.

*Hamon* v. *Falle*, L. R. 4 App. 247.

17. Delay—Petition and remonstrance in Royal Court for damages against illegal arrests and seizures by Attorney-General for alleged frauds against revenue laws—Joinder of Judges of Court as defendants—Plea of incompetency of Court—Declaration of incompetency by Court—*Doléance* and petition to Queen in Council after two years' interval—Petition by Attorney-General to dismiss summons for him to appear—Summons discharged.

*In re Whitfield*, 5 Moo. P. C. C. 157.

18. *Droit de retrait*, principle of—Heir not bound to perform stipulations of original contract for personal services—Contract of mixed nature—Not enforceable against vendor's heir.

*Touzel* v. *Filleul*, 3 Moo. P. C. C. 484.

19. English common law of real property of no force in Jersey.

*De Carteret* v. *Baudains*, L. R. 11 App. 214.

20. Expectancy—Sale by expectant heir to brothers—No fraud or inadequacy of consideration—Lapse of year and day from opening of succession—Unconscionable bargains—Transaction impeachable within thirty years of sale, forty years of death of parents—Price less than one-half value—*Mandat* what—Oath to abide by contract before bailiff of Royal Court—Tacit reservation of just grounds of complaint—Trusts *inter vivos*.

*Godfray* v. *Godfray*, 3 Moo. P. C. C., N. S., 316.

21. Foreign judgment—Debtors' trustees, joining of as co-defendants not permissible—Practice—Interest on judgment—Costs.

*Hawksford* v. *Giffard*, L. R. 12 App. 122.

22. *Habeas corpus*—Jurisdiction of Court of Chancery to issue writ in vacation—Sealing of writ—5 & 6 Vict. c. 103—Order in Chancery, 1842, No. 4—Duty of Royal Court at Jersey to register warrant of attachment for contempt of writ.

*In re Belson*, 7 Moo. P. C. C. 114.

23. Husband and wife, judicial separation *quant aux biens*—Effect on husband's *droit de viduité*

*Lemprière* v. *Vibert*, 15 Moo. P. C. C. 427.

24. Husband and wife—Relationship not dissolved by death of one of the parties without issue—Husband, whose wife died child-

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less, incapable of acting as judge in case to which his nephew party.

*Becquet* v. *Lemprière*, 1 Knapp, 376.

25. Hypothec of movables—No possession—Registration—No priority over other creditors—Registration of debt affects only immovable property.

*Hayley* v. *Bartlett*, 14 Moo. P. C. C. 251.

Judge—Incompetency from relationship to party in case. See *ante*, 24.

26. Judge—Majority of jurats constituting Court necessary to validity of judgment—Casting vote of bailiff.

*Le Breton* v. *Ennis*, 4 Moo. P. C. C. 323.

27. Land—Lords of fiefs in Island of Jersey not bound to discharge rents or incumbrances due on estates falling into their possession by decease of their tenants.

*Pipon* v. *Coutanche*, 1 Acton, 4.

28. Land—Norman law in Jersey—Fines on death of tenants holding lands within manors—Forfeitures on conviction of crimes—Corporation sole or aggregate becoming possessed of lands by conveyance from tenants—Indemnification of lord for loss of seignorial rights—Demise of Crown without issue—Proceedings against Lieutenant-Governor of Island to vacate possession of site of Government House, or pay lord indemnity for loss of dues—Lord entitled to indemnity.

*Thornton* v. *Robin*, 1 Moo. P. C. C. 439.

29. Legislation—*Acte* of States—Lodging *au greffe* for fourteen days before determination—Preamble of *Acte*.

*In re States of Jersey, Re Gibaut*, 11 Moo. P. C. C. 320.

30. Legislation—Power of Lieutenant-Governor to veto act of States—Unconstitutional exercise—Special interest of Crown.

*In re States of Jersey*, 15 Moo. P. C. C. 195.

31. Legislation—Three Orders of Queen in Council addressed to Lieut.-Governor of Jersey, and directed by Home Secretary to be registered in island to give them force of law—Recalled on petition by States of Jersey, and numerous inhabitants—Acts passed by the States in substitution confirmed.

*Quære*, whether Crown by prerogative can by Orders in Council, with concurrence of States of Jersey, originate laws for Jersey, or does exclusive right of originating laws reside in States?

*In re States of Jersey*, 9 Moo. P. C. C. 185.

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received; three, that "*Acte*" in question ought to be modified; three, that "*Acte*" ought to be annulled—Reception of remonstrance.

*Le Gros* v. *Le Breton*, 2 Knapp, 181.

38. Practice of Royal Court in Jersey—Party reported by the viscount or sheriff to have repudiated succession in an Act *bénéfice d'inventaire*—Appeal by must be at time inventory is recorded.
*Le Feuvre* v. *Le Feuvre*, 2 Moo. P. C. C. 70.

39. Principal and agent—Commission to sell and transfer stock "when the funds should be at 85 per cent., or above that price"—Agent bound to sell when the funds reach 85 per cent.
General rule in Privy Council not to condemn appellant to pay respondent's costs, where judgment of Court below altered on appeal—Alteration obtainable in Court below without appeal—General principle of judgment affirmed—Appellant ordered to pay respondent's costs.
*Bertram* v. *Godfray*, 1 Knapp, 381.

40. Prison Board of Jersey—Order in Council 11 December, 1837—Liability for escape of prisoner for debt by gaoler's negligence.
*Le Breton* v. *Aubin*, 10 Moo. P. C. C. 17.

41. Public register of Jersey—Registration in by order of Royal Court—Effect of marriage contract—Hypothec.
*Simon* v. *Vernon*, L. R. 8 App. 542.

42. Rent—A covenant to pay a common rent as seigneurial binding, notwithstanding rent may have been before alienated from fief, and only repurchased by lord.
*Lemprière* v. *Le Brun*, 1 Acton, 7.

43. Repair of pavement of St. Helier—No power in Royal Court to appoint commissioners for, and raise cost by tax on inhabitants.
*Le Gros* v. *Le Breton*, 2 Knapp, 181.

44. Royal Court, constitution of—Prerogative of Crown to authorise new election on resignation of jurat—Power of Royal Court on death of jurat—*Actes* accepting resignation of two jurats—Petition to Crown against confirmation—Suspension of new elections—Reform of Court.
*In re Jersey Jurats*, L. R. 1 P. C. 94.

45. Set-off—Liquid demand—Remand of case to ascertain fact.
*Dyson* v. *Godfrey*, L. R. 9 App. 726.

46. Ship—Mortgage of for nominal sum to secure unascertained balance due to mortgagee—Power to sell by public auction, or

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to hold, enjoy, and possess as sole owner, until full amount of claim satisfied—Default in payment of sum named before real balance ascertained, and pending investigation thereof before arbitrators—Vessel sold by private contract—Sale wrongful, and not warranted by conditions of mortgage deed—Account of value of ship at time of sale—Amount paid to mortgagor.

Appeal *in formâ pauperis* allowed, the appellant by petition and affidavit alleging that he was not worth £5, besides wearing apparel, &c.

*Brouard* v. *Dumaresque*, 3 Moo. P. C. C. 457.

47. Tenure *d'hanbert*—Crown not entitled to *primer seisin*, or *l'année de succession* upon death of lord of manor in Jersey.

Existence of feudal custom in one country, as England, affords no legal inference of its existence in another country, as Jersey.

*Attorney-General* v. *Symonds*, 1 Knapp, 390.

48. Trustee—Liability of to account to *cestui que trust* for profits—Possibility of incurring loss—Bankruptcy—Right of creditors to take whole estate of debtor with liabilities.

*Williams* v. *Stevens*, L. R. 1 P. C. 352.

49. Vendor and purchaser—Purchase within forty days of death of vendor set aside by heir, such purchases being void by the law of Jersey—No right in purchaser to repayment by heir of purchase-money—Only recoverable from persons to whom given by deceased vendor.

*Semble.*—Receiver of purchase-money ought to be made party to suit for recovery of property sold under such circumstances.

*Marett* v. *Jennes*, 1 Knapp, 103.

50. Way, right of—Creation of title to servitude—Dedication followed by user.

*De Carteret* v. *Baudains, Same* v. *Gautier*, L. R. 11 App. 214.

51. Wills—*Acte* of 24 June, 1851, arts. 8, 10—Execution—Attestation—Date sufficiently set forth—Holograph.

*Manger* v. *Le Gallais*, L. R. 1 P. C. 470.

52. Will—Testamentary power—Widow and child—Third of personal estate—Reduction *ad legitimum modum*—Title of executors to possession of testator's estate—Inventory—Citing heir—Heir's title to possession, how acquired—*Le mort saisit le vif*—Executors *procureurs légaux* of heir.

*La Cloche* v. *La Cloche*, L. R. 3 P. C. 125.

**JERSEY**—*continued.*

53. Will void—Codicil valid—Witness, competency of, to prove codicil, when incompetent to prove will.
*Falle* v. *Godfray*, L. R. 14 App. 70.

54. Witness, *inimitié* of—Admissibility of evidence—Erroneous practice founded on old Norman law, not altered by Judicial Committee—Objection to judge not witness, by old Norman law.
*Janvrin* v. *De la Mare*, 14 Moo. P. C. C. 334.

**GUERNSEY.**

1. Aliens domiciled in Island—Deportation of—Advice of bailiff and jurats of Royal Court not necessary—Procedure in conference between bailiff and jurats, and Governor or Lieut.-Governor—Writ of pardon—Verification and registration in Royal Court not necessary—Refusal to discharge on production of writ of pardon—Obedience not to be enforced by Lieut.-Governor by threat of military or other force.
*In re Bailiff and Jurats of Royal Court of Guernsey*, 5 Moo. P. C. C. 49.

2. *Contrôle de la Reine* of Royal Court, office of—Amalgamation with that of *Procureur de la Reine*—Cognisance of States—Revival of office—Abolition of such office by Order in Council with consent of States.
*In re States of Guernsey*, 14 Moo. P. C. C. 368.

3. Island of Herm—Dependency of Guernsey—Local taxation—Duty of one shilling per gallon on all spirituous liquors retailed and consumed in Guernsey—Produce to be applied in construction and repair of coast defences, harbours, roads, &c.—Prohibition of importation of spirits into the islands of Sark, Herm, and Jethou—Object to which the tax to be applied no ground of exemption of inhabitants of Herm.
*Martyn* v. *McCullock*, 1 Moo. P. C. C. 308.

4. Poor rate—Power of Royal Court to direct manner in which, and property upon which, to be levied—Rating inhabitants in respect of personal property situate out of Island.
*Tupper* v. *Treasurer of the Hospital of St. Peter Port*, 3 Knapp, 406.

## ISLE OF MAN.

1. Commutation of Tithe Act, 1839—Lunatics Act, 1860—Rent-charge, rateability of.

*Ingram* v. *Drinkwater*, 44 L. J. P. C. 83.

2. Compensation—Right of action taken away.

*Great Laxey Mining Co.* v. *Clague*, L. R. 4 App. 115.

3. Customary estates of inheritance—Rights of Crown—Minerals—Clay and sand—Acts of settlement.

*Attorney-General for Isle of Man* v. *Mylchreest*, L. R. 4 App. 294.

4. Deeds, execution of which had been obtained by imposition from an imbecile old man, set aside—A degree of weakness of mind far below what would be necessary to justify a commission of lunacy, if taken advantage of to procure the execution of a deed, will be sufficient ground for setting that deed aside.

When the Chancellor of the Isle of Man has referred a case to six members of the House of Keys, chosen by the parties, he is not bound by their decision, but may again refer the case to six members of his own selection.

*Blachford* v. *Christian*, 1 Knapp, 73.

5. *Donatio mortis causa*—Evidence—Burden of proof on donee—Why—Jurisdiction of Ecclesiastical Court.

*Cosnahan* v. *Grice*, 15 Moo. P. C. C. 215.

6. Dower—Common Law of Isle of Man—Ordinance of 1687—Only *dum sola et casta vixerit*—Forfeiture by birth and affiliation of illegitimate child.

*Cain* v. *Cain*, 2 Moo. P. C. C. 222.

7. Equity of redemption of lands in Isle of Man barred by Act of Settlement, passed in island 1703-4, after the lapse of twenty-one years from date of mortgage.

*Christian* v. *Goldie*, 2 Moo. P. C. C. 226.

8. Executor—Ecclesiastical law of Isle of Man—Liability for full amount of debts of deceased:—first, if an executor *de son tort*; secondly, omitting to return inventory of assets to Episcopal registry; thirdly, if there be a fraudulent omission in inventory of any part of assets of deceased, of which he has taken possession.

*Jackson* v. *Wilson*, 3 Moo. P. C. C. 177.

9. Executor carrying on trade—Liability for trade debts—Rights of trade creditors becoming so after testator's death—Liability of executor of deceased shareholder in Joint Stock Banking Co.,

**ISLE OF MAN**—*continued.*

for company's debts contracted subsequently to testator's death —Manx law and English law same as to principles of partnership.

*Labouchere* v. *Tupper*, 11 Moo. P. C. C. 198.

10. Insolvent debtor—Deed void against creditors of—Intack land—Quarter land—When liable to be attached for debt and sold—Debtor in prison—Mortgage in favour of creditors. [See *post*, 18, 19.]

*Corlett* v. *Radcliffe*, 14 Moo. P. C. C. 121.

11. Jury—Power of Court of Exchequer to summon—Information for intrusion and trespass by Attorney-General on behalf of Crown —Act of Tynwald, 1777—Nonuser of jurisdiction of Crown for benefit of subject—Recognisance to answer costs of appeal by Attorney-General not necessary.

*Attorney-General of Isle of Man* v. *Cowley*, 12 Moo. P. C. C. 27.

12. Jury—Reversal of finding of—Misconduct of—User for 21 years—Prescriptive right—Admission of material but not legal evidence —Rejection of material legal evidence.

*Cowin* v. *Moore*, 14 Moo. P. C. C. 354.

13. Legitimation by subsequent marriage of parents—Customary law respecting female child entitled as purchaser under trusts of will—More than one child born before marriage—Lapse of more than two years.

*Quane* v. *Quane*, 8 Moo. P. C. C. 63.

14. Libel—Bishop's charge in Convocation—Privileged communication —Actual malice.

*Laughton* v. *Bishop of Sodor and Man*, L. R. 4 P. C. 495.

15. Manor of Isle of Man—Right of tenant to alienate—Manx Act of Settlement, 4 February, 1703—Effect on Act of Tynwald, 24 June, 1645—Non-avoidance of mortgage by mortgagee not coming in to be admitted—Distinction between Records and Court Rolls, s. 5 of Act of Settlement—Change of tenants—Death—Alienation—S. 11 of Act—Grant of customary land to two or more persons valid though only one admissible—Notes of bank—Security in nature of mortgage bond and security of customary freeholds—Failure of bank—Death of partners—Manx Bankruptcy Act of 1817—Negotiable note.

*Boardman* v. *Quayle*, 11 Moo. P. C. C. 223.

**ISLE OF MAN**—*continued.*

16. **Manor, lord of—Tenants of—Mining rights—Water rights—Act of Tynwald, 1703.**
*Ballacorkish Mining Co.* v. *Dumbell*, L. R. 5 P. C. 49; 43 L. J. P. C. 19.

17. **Pleading—Averments of fraud—Proof—Finding of jury on question of fact only—Refusal to reverse.**
*Moore* v. *Clucas*, 7 Moo. P. C. C. 352.

18. **Quarter lands and Intack, tenure of, of nature of copyhold—Act of Isle of Man to amend law of mortgage, 1835—Abolition of foreclosure—Right of redemption—Sale.** [See *ante*, 10.]
*Birnie* v. *Caystile*, 9 Moo. P. C. C. 303.

19. **Quarter lands, tenure of—Power of wife to devise moiety of lands in, purchased by husband—Devise to husband, effect of.**
*La Mothe* v. *La Mothe*, 1 Knapp, 271.

20. **Settlement of real estate—Construction of.**
*Cain* v. *Teare*, 4 Moo. P. C. C. 249.

21. **Stone, right to dig for—Not lost by nonuser for twenty-one years if stones, &c., for use of party obtaining them, or to be employed by him for improvement of his own or neighbour's estate—Supplemental Act of Settlement, 6 June, 1704—Discretionary power in Governor to allow exercise of right.**
*Christian* v. *Gibson*, 3 Moo. P. C. C. 351.

22. **Trade, regulation of—Prohibition of goods prohibited in United Kingdom—Variation from time to time with prohibitions in United Kingdom—Repeal of prohibition of goods as to the United Kingdom—Repeal as to Isle of Man.**
*Burrow* v. *Quirk*, 2 Knapp, 79.

23. **Water, grant of use of—Absence of objection from grantor or claimant under him during 50 years—Prescriptive right of grantee—Damages for diversion by representative of grantor.**
*Tobin* v. *Stowell*, 9 Moo. P. C. C. 71.

24. **Will—Circumstances at date of—Trust—Expression of hope or confidence—Reversal of decree below without costs—Costs of mortgagees added to their security.**
*Quayle* v. *Davidson*, 12 Moo. P. C. C. 268.

25. **Will—Construction of—Die without leaving lawful issue.**
*Lewin* v. *Killey*, L. R. 13 App. 783.

## RANGOON.

1. Company registered in Victoria—Powers of directors to borrow and mortgage—Limitation—No restriction on company's borrowing powers—Ratification by company of acts of directors in excess of their authority—Ratification not extension of authority of directors for future.

   *Irvine* v. *Union Bank of Australia*, L. R. 2 App. 366.

2. General average—Jettison—No right to contribution in wrongdoers whose acts lead to, or in those legally responsible for them—Innocent owners of jettisoned cargo—Rules as to rights and remedies resulting from proper case of jettison.

   *Strang, Steel & Co.* v. *Scott & Co.*, L. R. 14 App. 601.

3. Insurance, marine—"Open cover"—Application for policies to amount of cover held—Acceptance of subsisting proposal—Binding contract to issue policy in terms of open cover.

   *Bhugwandass* v. *Netherlands India Sea and Fire Insurance Co. of Batavia*, L. R. 14 App. 83.

4. Insurance, marine—Policies for total loss on cargo and disbursements respectively — Shipwreck — No steps taken to save or discharge cargo—Ship dismantled—Notice of abandonment of cargo by captain to insurers—Ship and cargo sold by public auction—Large part of cargo afterwards saved—No total loss of cargo within policies—Total loss of disbursements payable out of freight affirmed.

   *Currie* v. *Bombay Native Insurance Co.*, L. R. 3 P. C. 72.

## PRACTICE OF THE JUDICIAL COMMITTEE.

1. Absence from colony without representative in island when decree pronounced—Appeal allowed notwithstanding lapse of time. (Newfoundland.)

   *Henderson* v. *Henderson*, 4 Moo. P. C. C. 259.

2. Amendment of rule *nisi* refused—Discretion of Court. (New South Wales.)

   *Australian Steam Navigation Co., Owners of S.S. Victoria* v. *Smith & Sons, Owners of Keilawarra*, L. R. 14 App. 318.

3. Appeal against final judgment, decree or sentence of court, or rule or order having effect of final or definitive sentence—Regulations—Reservation to King in Council upon petition of any person aggrieved by any judgment or determination of court to appeal therefrom, upon such other terms and upon such other

**PRACTICE**—*continued.*

regulations and restrictions as to His Majesty should deem fit—No appeal except from a final judgment, decree or sentence, or rule or order having effect of a definitive sentence. (Gibraltar.)

*In re Nahon and Pariente*, 2 Knapp, 56. See Jam. 22; Hg. Kg. 14; Jers. 36.

4. Appeal, altering mode of — Proclamation of Governor, dated 14th of May—Alteration to take effect from 18th—Appeal noted on 2nd from judgment made on 1st—Petition to appeal presented on 15th—To be prosecuted according to previous practice.

*Semble.*—The Privy Council will not direct a greater security to be entered into by appellant on granting him leave to appeal, than practice to require in colony, although Governor's instructions empowered him to require greater. (Demerara.)

*Craig* v. *Shand*, 1 Knapp, 253.

5. Appeal—Power by statute to H. M. to make rules for—No rules made—Refusal of court below to allow appeal—Appeal allowed by Judicial Committee on special petition. (New South Wales.)

*Flint* v. *Walker*, 5 Moo. P. C. C. 179; *Bank of Australasia* v. *Breillat*, 6 Moo. P. C. C. 152; *Marchioness of Bute* v. *Mason*, 7 Moo. P. C. C. 1.

6. Appeal allowed *ex parte*—Costs, security for respondent's—Increase—Length of transcript. (Lower Canada.)

*Boswell* v. *Kilborn*, 13 Moo. P. C. C. 476.

7. Appeal direct to Her Majesty in Council from Supreme Court—Order in Council, 10 May, 1860—Refusal to allow appeal from order made before—Special leave.

*Bunny* v. *Judges of New Zealand*, 15 Moo. P. C. C. 164.

8. Appealable value, how determined—Canadian Act, 34 Geo. 3, c. 6, s. 30—To what extent interest of party affected by judgment—Leave to appeal granted by colonial Court under colonial statute—Right of H. M. in Council to entertain petition to rescind. (Lower Canada.)

*Macfarlane* v. *Leclaire*, 15 Moo. P. C. C. 181.

9. Appealable value, how calculated—Special leave to appeal, when granted.

*Allan* v. *Pratt*, L. R. 13 App. 780.

10. Appealable value—Limitation by colonial Act of—Imperial Act—All laws by colonial Legislature valid—Colonial Court of Appeal to be subject to such appeal as before and to such other pro-

**PRACTICE**—*continued.*

visions as made by colonial Act—Petition for leave to appeal not entertained—Special saving in colonial Act of rights and prerogatives of crown. (Lower Canada.)

*Cuvillier* v. *Aylwin*, 2 Knapp, 72.

Overruled by *Cushing* v. *Dupuy*, L. R. 5 App. 409.

11. Appealable value—Appeal to Governor and Council from Supreme Court—From Council to Her Majesty—No appeal from Supreme Court to Her Majesty—Advice to allow appeal to Governor and Council. (Prince Edward's Island.)

*In re Cambridge*, 3 Moo. P. C. C. 175. See *ante*, pp. 222 *seq.*

12. Appealable value—Adding costs. (Canada.)

*G. W. Rail. of Canada* v. *Braid*, 1 Moo. P. C. C., N. S., 101.

13. Appealable value—Leave given to appeal though subject-matter of suit below.

*Attorney-General of Jersey* v. *Le Capelain*, 4 Moo. P. C. C. 37.

14. Appealable value—Amount below—Refusal of Governor and Council to hear counsel in support of the rule on merits of case or questions of law raised—Leave to appeal. (Sierra Leone.)

*Patnelli* v. *Heddle*, 8 Moo. P. C. C. 41. See Vict. 46.

15. Appealable value £1000—Subject-matter £970—Leave to appeal from order refusing fourth new trial. (Van Diemen's Land.)

*In re Sherwin*, 4 Moo. P. C. C. 311.

16. Appealable value—Special leave—Validity of fiat of insolvency—Appealable grievance. (Jamaica.)

*In re Abrahams*, 2 Moo. P. C. C., N. S., 241.

17. Appealable value—Matter of public interest to large class in colony—Constitution of colonial Act—Appeal limited to. (S. Australia.)

*Brown* v. *McLaughan*, L. R. 3 P. C. 458.

18. Appealable value—Cases concerning titles to lands or tenements, annual rents, rights in future of parties. (Canada.)

*Sauvageau* v. *Gauthier*, L. R. 5 P. C. 494.

19. Appealable value—Leave to appeal granted from decrees directing children to be removed from mother's guardianship. (Malta.)

*Camilleri* v. *Fleri*, 5 Moo. P. C. C. 161.

20. Appealable value—Question of importance—Leave. (Mauritius.)

*Peninsular and Oriental Steam Navigation Co.* v. *Shand*, 3 Moo. P. C. C., N. S., 272. See Vict. 33; Jam. 34.

**PRACTICE**—*continued.*

21. Appealable value—Special petition for leave to appeal—Interest on judgment—Important questions of mercantile law—Action of similar nature—Continuing contract—Canadian Act, 34 Geo. 3, c. 6, s. 30; Judicature Act—Canadian Act, 12 Vict. c. 37—Substitution of Queen's Bench for Court of Appeals in Canada. (Canada.)

*Boswell* v. *Kilborn*, 12 Moo. P. C. C. 467. See Canada, 6, 7.

22. Appealable value—Question of importance—Sum involved uncertain—Leave given—Security for respondent's costs to be lodged within three months of order giving leave. (Jamaica.)

*Churchwardens of St. George, Jamaica*, v. *May*, 12 Moo. P. C. C. 282. See Jamaica, 34.

23. Appealable value—Penalties for harbouring apprenticed labourers—Amount within sum specified in 47th & 48th Instructions of 1709—Leave to appeal refused. (Jamaica.)

*In re Harvey*, 3 Moo. P. C. C. 148.

24. Appealable value—Rate for relief of poor—Assessments on ratepayers, separately and collectively, less than sum fixed. (Guernsey.)

NOTE.—Whenever the Royal Courts of Guernsey and Jersey refuse to grant permission to a party to appeal, and a petition for that purpose is presented to the King in Council, a letter is sent to them from the Council Office desiring them to state the reasons of their refusal, to which they return answers signed by the bailiffs. This practice does not extend to petitions for leave to appeal from the Courts of any other of His Majesty's dominions.

*In re Tupper*, 2 Knapp, 201.

25. Appealable value, amount recovered under—Other actions on same transaction decided by same judgment—Leave granted—Observations as to prerogative of Crown to grant appeal to England notwithstanding colonial Act. (Lower Canada.)

*In re Marois*, 15 Moo. P. C. C. 189.

26. Appealable value—Amount under—Actions in nature of petition of right—Colonial Act, 28 Vict. No. 241—Judgments against Crown—Refusal of leave to appeal—Terms of Attorney-General in colony paying verdict and costs—Leave given on special petition to Judicial Committee without terms or security—Consolidation of appeals. (Victoria.)

*In re Attorney-General of Victoria*, L. R. 1 P. C. 147.

**PRACTICE**—*continued.*

27. Appealable value £300—Documents sued for of no value—Special leave to appeal granted on allegation they exceeded £300 in value—Allegation shown unfounded in fact at hearing—Case stopped, appeal dismissed with costs. (Barbadoes.)
*Wilson* v. *Callender*, 9 Moo. P. C. C. 100.

28. Appealable value—Erroneous calculation—Leave to appeal obtained *ex parte*—Order discharged on petition. (Lower Canada.)
*Quebec Fire Assurance Co.* v. *Anderson*, 13 Moo. P. C. C. 477.

29. Appealable value—Too late to take objection at hearing—Motion to dismiss appeal—Proper course. (Natal.)
*Aldridge* v. *Cato*, L. R. 4 P. C. 313. See Malta, 11.

30. Appeals—Consolidation of—Allowed at any stage if convenient.
*Hiddingh* v. *Denyssen*, L. R. 12 App. 107.

31. Bail in ecclesiastical and maritime cases—Given in colony—May be dispensed with in Privy Council in proper case—Privy Council Rules of 1865, No. 15.
*Hunter* v. *Hesketh*, L. R. (1891) A. C. 628.

32. Compromise of appeal on terms of paying compensation in respect of slaves subject of appeal—Appeal dismissed on petition, order made on Accountant-General of Court of Chancery to pay appellant the compensation money. (British Guiana.)
*McTurk* v. *Douglas*, 6 Moo. P. C. C. 500.

33. Costs—Security, amount of—Appeal allowed reducing—Divorce *a vinculo*. (Mauritius.)
*Hulm* v. *Hulm*, 4 Moo. P. C. C. 262. See Mauritius, 12.

34. Costs—Security for—Appeal from sentence of Lieut.-Governor passed without hearing appellant—Execution delayed. (Heligoland.)
*Siemens* v. *Heirs of Bufe*, 11 Moo. P. C. C. 62.

35. Costs—Security for—Colonial Act, 15 Vict. c. 10—Bond not filed within three months—Revocation of leave by Supreme Court—Special leave on petition to Judicial Committee—Security for costs given in England—Liberty to apply to Court in Victoria to cancel bond. (Victoria.)
*Webster* v. *Power*, L. R. 1 P. C. 150. See Sierra Leone, 7; N. S. W. 65; N. Zeal. 1; Maur. 12.

36. Costs given to appellants—Points of law involved in appeals determined in two previous appeals against same respondents. (Jamaica.)
*Nedham* v. *Simpson*, 2 Knapp, 1. See N. S. W. 59, 63; Jers. 39.

**PRACTICE**—*continued.*

37. Counsel, number of entitled to be heard—Two distinct appeals against same respondent—Defence to each appeal in substance same. (British Guiana.)
*In re Downie and Arrindell*, 3 Moo. P. C. C. 414.

38. Criminal proceedings, appeal in—Inexpediency of entertaining—Authority of Crown to review decisions civil and criminal of colonial courts—Proceedings criminal in form, civil in substance—Important question of law and property—Conviction under Ordinance giving no appeal—Advice to H. M. to admit appeal. (Falkland Islands.)
*Falkland Islands Co.* v. *The Queen*, 1 Moo. P. C. C., N. S., 299.

39. Criminal proceeding, appeal in—Leave granted on *ex parte* application—Rescinded on special petition of the Attorney-General of the Island. (Jersey.)
*In re Ames*, 3 Moo. P. C. C. 409.

40. Criminal cases—Special leave to appeal—Order directing defendant to plead—Definitive sentence—Order in Council, 13 May, 1572.
*Renouf* v. *Attorney-General for Jersey*, L. R. 8 App. 304.

41. Conviction of misdemeanour in Jamaica, appeal from—Pardon before hearing—Practice. (Jamaica.)
*Levien* v. *Reg.*, L. R. 1 P. C. 536.

42. Death of defendant—Revivor in name of official representative of estate. (Jersey.)
*La Cloche* v. *La Cloche*, L. R. 4 P. C. 325.

43. Delay of six years—Leave to prosecute appeal refused—Circumstances over which appellant had no control. (Sierra Leone.)
*Lindo* v. *The King*, 1 Moo. P. C. C. 3.

44. Delay—Decision in 1819—No step taken for two years previous to the application—Leave to appeal refused.
*Semble.*—Crown has no right greater than subject to be let in to appeal in general case in which its interests are concerned. (Mauritius.)
*Laing* v. *Ingham*, 3 Moo. P. C. C. 26.

45. Delay—Bar to appeal—5 Geo. 4, c. 113, s. 29; 3 & 4 Will. 4, c. 41—Incorporation of Acts. (Sierra Leone.)
*Logan* v. *Burslem*, 4 Moo. P. C. C. 284.

46. Delay—Vice-Admiralty Courts abroad, appeals from—Rules as to, s. 35—Ignorance of rule no ground to allow appeal—2 & 3 Vict. c. 51. (St. Helena.)
*The Queen* v. *Joze Alves Dias*, 6 Moo. P. C. C. 102.

**PRACTICE**—*continued.*

47. Delay of eight years from judgment below—No explanation—Leave to appeal *in formâ pauperis* refused. (Guernsey.)
*In re Sarchet*, 10 Moo. P. C. C. 533. See N. S. W. 61.

48. Delay—Refusal of Royal Court to hear witnesses—3 & 4 Will. 4, c. 41, s. 7—Special examiner—Appeal to stand over. (Jersey.)
*Falle* v. *Le Sueur*, 12 Moo. P. C. C. 501. See Jers. 17.

49. Divorce—Appeal from sentence of—Charter of Justice—Leave on special petition to Crown. (Mauritius.)
*D'Orliac* v. *D'Orliac*, 4 Moo. P. C. C. 374. See N. S. W. 3, 14, 69; Qu. 7; Vict. 33; Can. 44.

50. Matrimonial suits—Appeal in—None under Charter of Justice—Allowance of on special petition—Practice in incompetent appeals. (Mauritius.)
*Shire* v. *Shire*, 5 Moo. P. C. C. 81.

51. Documents not before Court below—Production of at hearing—Admissibility of reserved.
*Attorney-General and Receiver-General for Jersey* v. *Le Moignan*, L. R. (1892) A. C. 402.

52. Evidence not tendered below—Reception of by Judicial Committee. (Barbadoes.)
*Guimaraens* v. *Preston*, 4 Moo. P. C. C. 167. See Gib. 9, 16.

53. Fact, concurrent findings of by Court below—Question on appeal, what — Were judgments below clearly wrong? (Lower Canada.)
*Allen* v. *Quebec Warehouse Co.*, L. R. 12 App. 101.

54. Facts not submitted to Court below—No appeal on ground they would have caused Court below to make different order. (Hong Kong.)
*Lyall* v. *Jardine*, L. R. 3 P. C. 318.

55. Foreign appellant, principle of *Logan* v. *Burslem*, 4 Moo. P. C. C. 284, enforced—Procedure law of the forum binding all. (Sierra Leone.)
*Lopez* v. *Burslem*, 4 Moo. P. C. C. 300. See 6 & 7 Vict. c. 38.

56. Guardian—Appeal *in formâ pauperis* by—Special circumstances—Affidavit no solvent next friend of infant. (Jersey.)
*Gaudin* v. *Messervy*, 2 Moo. P. C. C., N. S., 372.

57. *In formâ pauperis*—Appellant admitted to appeal. (Jersey.)
*In re Lemprière*, 11 Moo. P. C. C. 398. See *ante*, 47; Jers. 46.

**PRACTICE**—*continued.*

58. *In formâ pauperis*—Appeal—Sureties for prosecuting dispensed with. (Jersey.)
*Brouard* v. *Dumaresq*, 6 Moo. P. C. C. 412.

59. *In formâ pauperis*—Appeal—Costs, security for, dispensed with—Certificate of counsel. (Isle of Man.)
*Kelly* v. *Corlett*, 14 Moo. P. C. C. 89. See Sierra Leone, 7.

60. Interpretation of Code—Appeal to earlier law and decisions when justifiable.
*Robinson* v. *Canadian Pacific Railway Co.*, L. R. (1892) A. C. 481.

61. Judgments written after judgment delivered and sent to England for appeal—Condemnation of such course. (Canada.)
*Brown* v. *Gugy*, 2 Moo. P. C. C., N. S., 341.

62. Laches of respondent—Ejectment by appellant in Ceylon—Bill in Court of Chancery in England by respondent to establish sale of some lands—Omission to put real question in issue in District Court of Ceylon through fault of respondent—Decree of that Court in appellant's favour—New trial granted by Supreme Court—Appeal to Judicial Committee dismissed on terms of respondent's consenting to dismissal of bill in England with costs and paying costs in Court below—Otherwise order granting new trial reversed—Supreme Court of Ceylon to ascertain mesne profits. (Ceylon.)
*Anstruther* v. *Arabin*, 6 Moo. P. C. C. 286.

63. Leave to appeal—Petition for—Canadian Act, 38 Vict. c. 11, s. 47—Prerogative—Small amount at issue—No general principle involved. (Canada.)
*Johnston* v. *Ministers, &c. of St. Andrew's Church, Montreal*, L. R. 3 App. 159. See Canada, 3, 4.

64. Leave to appeal refused because no power by Supreme Court—Leave granted by Judicial Committee to appeal against original decree and also against refusal of leave. (Straits Settlements, Penang Division.)
*Neo* v. *Neo*, L. R. 5 P. C. 89.

65. Leave to appeal—Order of Supreme Court of Civil Justice of British Guiana committing publishers of local journal to prison for six months for alleged contempt of Court in publishing in such journal comments on administration of justice by that Court—Liberty to Judges of Court to object to competency of appeal at hearing. (British Guiana.)
*In re McDermott*, L. R. 1 P. C. 260.

**PRACTICE**—*continued.*

66. Special leave—Principles on which granted—Petition refused in case of dispute of fact as to sale or gift of goods worth £1000. (Canada.)
*Prince* v. *Gagnon*, L. R. 8 App. 103.

67. Special leave—Principles on which granted—Not when judgment plainly right or attended with little doubt.
*La Cité de Montréal* v. *Les Ecclésiastiques du Seminaire de S. Sulpice de Montréal*, L. R. 14 App. 660.

68. Special leave to appeal refused when issue of fact only involved—Essentials of petition for special leave.
*Canada Central Railway Co.* v. *Murray*, L. R. 8 App. 574.

69. Special leave to appeal refused when special agreement to submit to Court sanctioned by Court below, defining and restricting power of Court.
*A.-G. of Nova Scotia* v. *Gregory*, L. R. 11 App. 229.

70. Special leave to appeal granted *ex parte* from order of Supreme Court of Jamaica granting peremptory *mandamus*—Right to move on counter-petition to quash leave.
*Hill* v. *Reg.*, 8 Moo. P. C. C. 138.

71. Leave to appeal improperly obtained—Application to dismiss—Delay till hearing—No costs—Special circumstances—Fresh security. (Canada.)
*Sauvageau* v. *Gauthier*, L. R. 5 P. C. 494.

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RELATING TO

THE COLONIES, CHANNEL ISLANDS,

AND

ISLE OF MAN,

DECIDED IN THE ENGLISH COURTS

OTHERWISE THAN ON APPEAL.

# A TOPICAL INDEX OF CASES

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41. Bankruptcy law, English—Binding upon colonies—English composition deed pleadable in Canadian Court—Action in England on Canadian judgment on contract made and to be performed in Canada—English composition deed made before the Canadian judgment not pleadable—English bankruptcy law binding in action in England on foreign and colonial debts.

*Ellis* v. *McHenry*, L. R. 6 C. P. 228 ; 40 L. J. C. P. 109.

42. Bankruptcy, act of—Receipt by creditors of bankrupt of moneys due to bankrupt in West Indies—Assignment of bankrupt's property in bankruptcy—Right of assignees to money.

*Sill* v. *Worswick*, 1 H. Bl. 665.

43. Bankruptcy—Action against bankrupt in District Court of Colombo, Ceylon—Sequestration of real property of bankrupt in Ceylon to compel appearance—Injunction in England—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 13.

*Ex parte Rogers, in re Boustead*, L. R. 16 Ch. D. 665.

44. Bankruptcy—Consignments by Barbados firm to London firm—Acceptance by London firm of drafts of Barbados firm—Remittances to cover acceptance—Bankruptcy of both firms—No specific appropriation—Application of *Ex parte Waring* to remittances in specie.

*Trimingham* v. *Maud*, L. R. 7 Eq. 201 ; 38 L. J. Ch. 207.

45. Bankruptcy—Firm in England agents to firm in Ceylon—Consignments of coffee to former by latter—Acceptance of bills against coffee by former—Pledge of coffee and other securities by former with their broker to secure debt of their own—Execution of creditor's deed by English firm—Sale of coffee by broker—Right of Ceylon firm to marshal securities remaining in broker's hands, and to lien thereon for balance due to them on coffee.

*Ex parte Alston, in re Holland*, L. R. 4 Ch. 168.

46. Bankrupt—Action by in British colony (New Zealand) disputing

validity of adjudication—Effect of in keeping alive right to dispute adjudication—12 & 13 Vict. c. 106, s. 233—Departure of bankrupt abroad—Petition therefore not in prescribed form —Refusal to annul adjudication.

*In re Bunny*, 1 De G. & J. 309; 26 L. J. Bkcy. 83.

47. Bigamy—Second marriage in Australia—Absence of proof that marriage good by law of colony.

*Burt* v. *Burt*, 2 S. & T. 88; 29 L. J. P. M. & A. 133.

48. Bill of exchange—Bankruptcy of acceptor—Proof for re-exchange—Law of Tobago—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 57, 97.

*In re Gillespie, Ex parte Robarts*, L. R. 16 Q. B. D. 702.

49. Bill of exchange, form of—Drawn in Isle of Man—Foreign bill, stamping of—17 & 18 Vict. c. 83, ss. 3, 5—Promise to pay transferred debt on receiving funds.

*Griffin* v. *Weatherby*, 9 B. & S. 726; L. R. 3 Q. B. 753; 37 L. J. Q. B. 280.

50. Bill of exchange—South Australian Bills of Exchange Act, 1884, s. 57—Dishonour of bill out of the colony—Damages recoverable confined to amount of the re-exchange and interest thereon —Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 57.

*In re Commercial Bank of South Australia*, L. R. 36 Ch. D. 522.

51. Bills of exchange—Mortgage by drawers of estate in Guiana to secure cash credit granted to them by acceptors—General current account—Insolvency of drawers and acceptors—Appropriation of mortgage to payment of the bills.

*City Bank* v. *Luckie*, L. R. 5 Ch. 773.

52. Bill of lading—Shipment on board vessel of consignee—Consignee under advances to estate in Jamaica, produce of which shipped —Special indorsement of bill of lading requiring acceptance of bills of exchange—Transfer of to another hand.

*Mitchel* v. *Ede*, 11 A. & E., 888; 9 L. J. Q. B. 187.

53. Bishop, colonial—No coercive jurisdiction imparted by letters patent from the Crown in colony with independent legislature—Legal *status* of—Right to endowment—*Long* v. *Bishop of Cape Town*, 1 Moo. P. C. C., N. S., 411, and *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., 115, considered.

*Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. 1; 36 L. J. Ch. 2.

54. Bishopric of Christchurch, New Zealand—Appointment by Crown to of incumbent of English benefice—Advowson of benefice

previously granted to subject—No right in Crown to present to benefice.

*Reg.* v. *Eton College*, 8 E. & B. 610; 27 L. J. Q. B. 132.

55. Bottomry bond—Allowance under of master's wages paid on action abroad—*Onus* on owner to show amount improper.

*Rajah of Cochin*, Swab. 473.

56. Cession of British territory—Effect of on nationality of persons domiciled therein at time and continuing therein.

*Doe* v. *Acklam*, 2 B. & C. 779; 2 L. J. 129.

57. Cheque on Jersey bank—Presentment for payment—Custom of London bankers as to foreign cheques—Laches.

*Heywood* v. *Pickering*, L. R. 9 Q. B. 428; 43 L. J. Q. B. 145.

58. Claim to extensive territories in the colonies with titles of nobility and Royal prerogative—Challenge by the Crown—*Onus probandi*—Costs.

*Alexander* v. *Officers of State for Scotland*, L. R. 1 H. L. Sc. 276.

59. Colony a place abroad—Judicial notice of—Geelong, Victoria.

*Cooke* v. *Wilson*, 1 C. B., N. S., 153; 26 L. J. C. P. 15.

60. Company in England—Colonial agent of—Shareholder—Agreement for call money to be debited in agency account—Continued employment after liquidation—Salary in full—Set-off.

*London & Colonial Co., In re; Ex parte Clark*; L. R. 7 Eq. 550.

61. Company in New Zealand—Branch office, assets, and liabilities in England—Jurisdiction to wind up in England—Pending liquidation in colony—Companies Act, 1862, s. 199—Securing English assets till New Zealand liquidators take proceedings to make them available for English creditors *pari passu* with those in New Zealand.

*In re Matheson Brothers*, L. R. 27 Ch. D. 225.

62. Company in South Australia—Branch office, assets, and liabilities in England—Jurisdiction to wind up in England—Provisional liquidation in S. Australia—Winding up in England to be ancillary to winding up in Australia—Limitation of powers of liquidator in England.

*In re Commercial Bank of South Australia*, L. R. 33 Ch. D. 174.

63. Company—Incorporation of by colonial (Canadian) Act—Calls on

shares in—Action for—Pleading—Never indebted—Simple contract debt.

*Welland Railway Co.* v. *Blake*, 6 H. & N. 410; 30 L. J. Ex. 161.

64. Company in England for carrying on banking business in the colonies, especially in Australia—Shares issued with facilities for dealing therewith as negotiable securities or as money—No lien on for debt due from person to whom originally issued—Dismissal of bill in Sydney not conclusive against same plaintiff preferring bill in England on different allegations and equity—Delay, shares remaining in same name, no hindrance.

*Hunter* v. *Stewart*, 4 De G. F & J. 168; 31 L. J. Ch. 346.

65. Composition deed in New South Wales—Fraud in procuring execution of by creditors.

*Dauglish* v. *Tennant*, 8 B. & S. 1; L. R. 2 Q. B. 49; 36 L. J. Q. B. 10.

66. Contempt—Royal Court of Jersey—Power to commit without warrant.

*In re Wilson*, 7 Q. B. 984; 14 L. J. Q. B. 201.

67. Contempt—Chancery Court of Isle of Man—Power to commit for—Time certain, commitment for.

*In re Crawford*, 13 Q. B. 613; 18 L. J. Q. B. 225.

68. Contempt—House of Keys, Isle of Man—Power to commit for.

*In re Brown*, 5 B. & S. 280; 33 L. J. Q. B. 193.

69. Contract, rescission of—Grounds for—Misrepresentation in prospectus of Co.—Agent of New Zealand Government—*Bonâ fide* mistake of as to his authority—Non-ratification by New Zealand Government of contract by—Right to reject shares in Co.

*Kennedy* v. *Panama, &c. Mail Co.*, L. R. 2 Q. B. 580; 8 B. & S. 571; 36 L. J. Q. B. 260.

70. Convicts, assignments of—Power of Governors of New South Wales and Van Diemen's Land to revoke—Remission of sentences not necessary—9 Geo. 4, c. 83, s. 9.

*Bryan* v. *Arthur*, 11 A. & E. 108. *Vide post*, 95.

71. Copyright—Alien friend temporarily resident in British colony—Publication of work during residence—Not entitled to copyright by laws of the colony (Canada)—Entitled by English law—5 & 6 Vict. c. 45—Meaning of "author" in—Right of British Museum to copy.

*Routledge* v. *Low*, L. R. 3 H. L. 100; 37 L. J. Ch. 454.

72. Copyright—Work partly published in United States—Author going to reside in Canada—Publication of whole work in

England during such residence before completion of work in United States—Cheap reprint from American edition—Divisibility of copyright—Injunction against publication of last part of work.

*Low* v. *Ward*, L. R. 6 Eq. 415; 37 L. J. Ch. 841.

73. Costs—Order of Judicial Committee of Privy Council to pay—Collateral proceeding—Original suit (in Canada) not determined—Action of debt for.

*Hutchinson* v. *Gillespie*, 11 Ex. 798; 25 L. J. Ex. 103.

74. Death, presumption of—Person emigrating to Australia—Not heard of for seven years—Proof of time, as distinguished from fact, of death.

*In re Rhodes; Rhodes* v. *Rhodes;* L. R. 36 Ch. D. 586.

75. Death, presumption of—Sailing from Demerara before expiration of the hurricane months—No information for seven years—Presumption of death at particular time.

*Sillick* v. *Booth*, 1 Y. & C. C. C. 117. See Administration, *ante*, 6, 22; Life Insurance, *post*, 201.

76. Debt owing by residents in Mauritius—Bequest by testator resident at time of death in England of "all his estate and effects in Mauritius"—Testator not domiciled in Mauritius—Inclusion of debt in bequest.

*Guthrie* v. *Walrond*, L. R. 22 Ch. D. 573.

77. Discovery—Principal in New South Wales against agent in England—Production of documents by agent to person appointed by principal—Improper person—Striking out pleadings.

*Dadswell* v. *Jacobs*, L. R. 34 Ch. D. 278.

78. Divorce Court, jurisdiction of—Colonies foreign countries for purposes of.

*Firebrace* v. *Firebrace*, L. R. 4 P. D. 63; 47 L. J. Div. 41.

79. Divorce in Cape of Good Hope of marriage contracted in same colony—Subsequent marriage in same colony—Birth of *de quo* in Ireland—Residence for twenty years at Cape—Service in English regiment followed by service in Cape Mounted Rifles—Domicil—Validity of divorce.

*Argent* v. *Argent*, 4 S. & T. 52; 34 L. J. P. M. & A. 133.

80. Divorce—Jersey original domicil of marriage and matrimonial cohabitation—Desertion of wife by husband—Husband to United States—Acquisition by wife of *bonâ fide* domicil in England—Husband not amenable to English jurisdiction.

*Le Sueur* v. *Le Sueur*, L. R. 1 P. D. 139; 45 L. J. P. D. 73.

81. Domicil—Native of Canada—Residence in France—Residence in England—Will—Residue—Advancement—Ademption.

*Stevenson* v. *Masson*, L. R. 17 Eq. 78; 43 L. J. Ch. 134.

82. Domicil—Change of, how affected—Domicil of origin Scotch—Residence in India—Subsequent residence till death in Jersey.
*Haldane* v. *Eckford*, L. R. 8 Eq. 631.

83. Evidence—Accounts recorded in Court of Chancery (Jamaica) in suit against executors proving will in Jamaica—Suit against them in England—15 & 16 Vict. c. 86, s. 54.
*Sleight* v. *Lawson*, 3 Kay & J. 292; 26 L. J. Ch. 553.

84. Evidence—Commission to examine witnesses in Australia—Variance between judge's order and writ of commission—Admission of depositions.
*Hodges* v. *Cobb*, L. R. 2 Q. B. 652.

85. Evidence—Commission to examine witnesses in Newfoundland—Sufficiency of directions in judge's order—1 Will. 4, c. 22, s. 4—Sealed packet containing commission, return to it, examination of witnesses signed by commissioner, left at Master's office by person unknown—Sufficiency of proof of return—Presumption of proper examination of witnesses.
*Simms* v. *Henderson*, 11 Q. B. 1015; 17 L. J. Q. B. 209.

86. Evidence—Commission to examine witnesses and party to suit in New Zealand—Appearance of party examined at trial if required by opponent—Names of witnesses not necessarily to be included in order—Ord. xxxvii. r. 5, 1883.
*Nadin* v. *Bassett*, L. R. 25 Ch. D. 21.

87. Evidence—Colonial Act, printed copy of from Colonial Office—Discharge by Jamaica Court of Insolvency—Existence of such court.
*Clarke* v. *Emery*, 1 F. & F. 446. See 14 & 15 Vict. c. 99, ss. 7, 11.

88. Evidence—*Mandamus* to judge in colony to examine witness—Not granted where same end obtainable by commission—1 Will. 4, c. 22.
*Farnworth* v. *Hyde*, L. R. 2 C. P. 204; 14 C. B., N. S., 719.

89. Evidence—Refusal to allow plaintiff to take evidence of witness in Australia by affidavit—Appointment of examiner—15 & 16 Vict. c. 86, s. 36.
*Crofts* v. *Middleton*, 9 Hare, App. xvii, lxxv.

90. Evidence—Action on two judgments of Supreme Court of Jamaica—Copies of purporting to be signed by clerk of Court and certified by him to be true copies—Certificate of notary public to clerk's identity—Certificate of Governor of island to same—Copies held admissible.
*Appleton* v. *Lord Braybrook*, 6 M. & S. 34.

91. Evidence—Judgment of Court of Common Pleas in Tobago—Chief Justice's handwriting—Seal of Island.
*Buchanan* v. *Rucker*, 9 East, 192.

92. Evidence—Letter of attorney inrolled in Office of Record in Jamaica—Deed so inrolled—Examined copies of—Admissibility.

*Faulkner* v. *Daniel*, 3 Hare, 221.

93. Exchange—Judgment in Jamaica for sum in Jamaica currency—Action in England to recover value of—Value held to be that sum in sterling which the currency would have produced at actual rate of exchange between Jamaica and England at date of judgment.

*Scott* v. *Bevan*, 2 B. & Ad. 78.

94. Executor—Suit against in Court of Chancery in Jamaica for account—Bill in English Court of Chancery against him by same plaintiff on same matter—Insufficient averment.

*Foster* v. *Vassall*, 3 Atk. 587.

95. Executors in the Mauritius—Death of testator in Mauritius—Residue left to testator's mother in England—Transmission of to England—Payment of to mother's executors—Claim by creditor of testator in England—Constitution of legal personal representative of testator in England—Party to suit.

*Silver* v. *Stein*, 21 L. J. Ch. 312.

96. Factors' Act—Canada Code—Agent—Hypothecation by of property of real owner—Right of agent to pledge—Right of pledgee to set up title against real owner.

*City Bank* v. *Barrow*, L. R. 5 App. 664.

97. Felon—Remission of sentence by Governor of penal colony—Subsequently acquired property, protection in enjoyment of—5 Geo. 4, c. 84, s. 26.

*Gough* v. *Davies*, 2 Kay & J. 623; 25 L. J. Ch. 677.
*Cf. Fleming* v. *Smith*, 12 Ir. C. L. R. 404. *Vide ante*, 70.

98. Felony—Conviction for of beneficiary under settlement—Clause in against alienation by beneficiaries—Assignment of share under settlement—Conditional pardon—Subsequent vesting of share under settlement—No forfeiture to Crown—Forfeiture for attempted alienation—6 Vict. c. 7—Van Diemen's Land.

*Barnett* v. *Blake*, 2 Drew. & Sm. 117; 31 L. J. Ch. 898, *nom. Blake* v. *Barnett*.

99. Felony—Forfeiture for under old law—Conviction in New South Wales—Vested but defeasible interest in personal estate—Minority of felon—Royal prerogative.

*In re Bateman's Trust*, L. R. 15 Eq. 355; 42 L. J. Ch. 553.

100. Fugitive offender—Arrest in Canada under 6 & 7 Vict. c. 34—Charge burglary—Bill for ignored—Arraignment on another charge.

*Reg.* v. *Phillips*, 1 F. & F. 105.

101. Governor—Duty of in case of insurrection—Assent of to legislative enactment in own favour.
*Phillips* v. *Eyre*, 10 B. & S. 1004; L. R. 6 Q. B. 1; 40 L. J. Q. B. 28.

102. Governor of colony (Jamaica)—Misdemeanour by—Jurisdiction of justices—"Next court of oyer and terminer"—11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85—11 & 12 Vict. c. 42, ss. 2, 17, 20, 25.
*Reg.* v. *Eyre*, L. R. 3 Q. B. 487; 9 B. & S. 329; 37 L. J. M. C. 159.

103. Governor of Gibraltar—Action against for assault and false imprisonment—Searching plaintiff's house for Spaniard—Evidence.
*Glynn* v. *Houston*, 2 M. & G. 337; 2 Sc. N. R. 548.

104. Governor of Minorca—Action against in England by native Minorquin for trespass and false imprisonment in Minorca.
*Mostyn* v. *Fabrigas*, 1 Cowp. 161.

105. Governor of New York—Action against for matter done by him as Governor—Trial at bar granted, "because King defended it."
*Lord Bellamont's Case*, 2 Salk. 625.

106. Governor—Right of to exercise authority of ordinary—No power in to commit non-accounting churchwarden.
*Basham* v. *Lumley*, 3 C. & P. 489.

107. Governor of colony—Right to bounties in respect of seizure of slaves—Absence from colony at time of seizure.
*In re Seizure of Slaves at Sierra Leone*, Br. & Lush. Adm. 148; 32 L. J. Adm. 189.

108. Governor—Action of libel by—Production of documents by—Privilege — State communications — Affidavit — Sufficiency—Ord. xxxi. rr. 12, 13, 14.
*Hennessy* v. *Wright*, L. R. 21 Q. B. D. 509.

109. Government, colonial, not a corporation—Service of writ on impossible—Substituted service refused—Judicature Act, 1875, Ord. ix. r. 2.
*Sloman* v. *Governor and Government of New Zealand*, L. R. 1 C. P. D. 563.

110. *Habeas corpus*—Jurisdiction of Superior Courts at Westminster to issue to all parts of dominions of Crown—Canada.
*Ex parte Anderson*, 3 E. & E. 487; 30 L. J. Q. B. 129.
But *vide* now 25 Vict. c. 20.

111. *Habeas corpus*—Conviction of high treason in Upper Canada—Record of sentence of death—Pardon on condition of transportation to Van Diemen's Land for life—Legality of custody

of keeper of gaol of Liverpool on way to Van Diemen's Land —Affidavit not necessary to support return —Amending return —False return—Attachment for.

*Reg.* v. *Wynn and others; The Canadian Prisoners*; 8 L. J. Q. B. 129; S. P. *Reg.* v. *Allen*, 8 L. J. Ex. 229.

112. *Habeas corpus*—Indictment for high treason in Upper Canada—Confession of guilt and petition for pardon under Act of Upper Canada—Pardon on condition of transportation to Van Diemen's Land for life—Legality of custody of keeper of gaol of Liverpool on way to Van Diemen's Land.

Ibid.

113. *Habeas corpus*—Isle of Man—Not a foreign dominion of the Crown—25 Vict. c. 20.

Quære.—Whether, in order to bring a colony or foreign dominion of the Crown within the Act, it must have a court capable of issuing the writ of *habeas corpus* itself, or whether any analogous process would be sufficient.

*In re Brown*, 5 B. & S. 280; 33 L. J. Q. B. 193. S. P. *Ex parte Crawford*, 13 Q. B. 613; 18 L. J. Q. B. 225.

114. *Habeas corpus*—Writ directed to viscount of Isle of Jersey—Power of Baron of Exchequer to issue returnable in Queen's Bench—Affidavits entitled in Court of Exchequer—Judge issuing writ not acquainted with all circumstances—1 & 2 Vict. c. 45.

*In re Wilson*, 7 Q. B. 984; 14 L. J. Q. B. 105.

115. *Habeas corpus*, return to—Committal by Royal Court of Jersey—Affidavits in answer, admissibility of—Contempt, power of Court to commit for without warrant.

*In re Wilson*, 7 Q. B. 984; 14 L. J. Q. B. 201.

116. *Habeas corpus*—Return alleging sentence of Royal Court of Jersey—Transportation—Removal to Millbank to carry sentence into effect—5 Geo. 4, c. 84, s. 17—Non-admissibility of affidavits in addition to return to Court—Non-reception of discussion of law of Jersey on above return.

*Reg.* v. *Brenan*, 10 Q. B. 492; 16 L. J. Q. B. 289; and *vide ante*, 2.

117. Husband and wife—Englishman married in England to Jersey woman—Liability for antenuptial debts of wife—Married Woman's Property Act, 37 & 38 Vict. c. 50, s. 2—*Lex loci contractus*.

*De Greuchy* v. *Wills*, L. R. 4 C. P. D. 362.

118. Income tax—Business carried on solely in Australia—Partner residing in England—Liability of to pay tax on share of profits

not remitted to England—5 & 6 Vict. c. 35, ss. 100, 106, 108—16 & 17 Vict. c. 34, s. 2, sched. D.

*Colquhoun* v. *Brooks*, L. R. 14 App. 493.

119. Independence, declaration of by colony—Bond by B. to A. inhabitants of colony—B. and A. attainted, property confiscated by legislature of colony—Fund provided for payment of B.'s debts—Action by A. on bond against B. in England maintainable.

*Folliott* v. *Ogden*, 1 H. Bl. 124; S. C. *nom. Ogden* v. *Folliott*, 3 T. R. 726.

120. Insolvency, certificate of, obtained in Newfoundland—Bar to action in England for debt contracted in England prior to insolvency—49 Geo. 3, c. 27, s. 8.

*Philpotts* v. *Reed*, 1 Brod. & B. 294; 9 Moo. 623.

121. Insolvency, colonial—Insolvent uncertificated—Suspension of discharge of for twelve months—Opportunity to colonial creditors to come in and prove debts—Condition that insolvent's future property should be made available for creditors.

*Ex parte Gibson*, 34 L. J. Bkcy. 31.

122. Insolvency in New South Wales and surrender of estate—Life interest in fund in England—Forfeiture if life owner "should alien, sell, assign, encumber or transfer, or in any manner dispose of or anticipate"—Omission of life interest from insolvent's schedule—Acceptance of surrender—Sequestration of estate—Forfeiture of life interest.

*Townsend* v. *Early* (No. 2), 34 Beav. 23.

123. Insolvency in New South Wales—Settlement of real estate in England—Forfeiture of interest on bankruptcy, &c.—Meaning of "forfeited"—Bankruptcy Act, 1869, s. 74, re-enacted by 46 & 47 Vict. c. 52, s. 118.

*In re Levy's Trusts*, L. R. 30 Ch. D. 119.

124. Insolvency in Queensland—Death of insolvent intestate in England—Share of insolvent of fund settled on marriage of father and mother in court—Payment of to official assignee.

*In re Davidson's Settlement Trusts*, L. R. 15 Eq. 383; 42 L. J. Ch. 347.

125. Insolvency in South Australia—Personalty in England—Right of assignees to fund, how to be enforced—Domicile of insolvent—South Australian Statute, 23 & 24 Vict. No. 16.

*In re Blithman*, L. R. 2 Eq. 23; 35 Beav. 219; 35 L. J. Ch. 255.

126. Insolvent law of Victoria, discharge under—Effects of on action on bill of exchange drawn and accepted in England, and for

money lent, interest, and on accounts stated in England—Absence of allegation that either plaintiff or defendant domiciled in Victoria.

*Bartley* v. *Hodges*, 1 B. & S. 375. See observations on in *Gibbs* v. *Société Industrielle*, &c., L. R. 25 Q. B. D. p. 407.

127. Insolvent law of Victoria, discharge under—Effect on action for debt—Defendant resident in Victoria—Plaintiff resident in England when debts contracted—Defendant resident in England at commencement of suit—Debts payable in England by virtue of contracts.

*Gardiner* v. *Houghton*, 2 B. & S. 743.

128. Insolvency in Victoria—Real estate in England—Non-vesting of in assignee—Will—Letters testimonial of Supreme Court of Victoria (Probate Jurisdiction) setting out—Acceptance of as proof of will in Victoria of real estate in England.

*Waite* v. *Bingley*, L. R. 21 Ch. D. 674.

129. Insurance, marine—At and from L. to ports in any order backwards and forwards on West Coast of Africa—To commence at and from landing—Outward cargo to be considered homeward interest 24 hours after arrival—Loss of goods shipped at L. more than 24 hours after arrival on coast of Africa—Alteration of policy.

*Joyce* v. *Realm Marine Insurance Co.*, L. R. 7 Q. B. 580; 41 L. J. Q. B. 356.

130. Insurance, marine—Valued policy—Barter voyage to West Coast of Africa—"Outward cargo homeward interest 24 hours after arrival at first port or place of trade"—Liberty to extend valuation of homeward cargo—Landing of portion of cargo at first port—Departure without receiving other goods after more than 24 hours—Recovery of value of goods actually on board.

*Tobin* v. *Harford*, 17 C. B., N. S., 528; 34 L. J. C. P. 37.

131. Insurance, marine—Valued policy on freight from Calcutta to Mauritius—Passage money of coolies not included—Amount recoverable how calculated.

*Denoon* v. *Home & Colonial Assurance Co.*, L. R. 7 C. P. 341.

132. Insurance, marine—Voyage from Swan River to Mauritius—Anchoring in port of Mauritius—Usage as to—Question for jury whether ship arrived.

*Lindsay* v. *Janson*, 4 H. & N. 699; 28 L. J. Ex. 315.

133. Insurance—Fire policy—Marine policy at and from river Hunter to Sydney, thence to London, including risk of transhipment

or landing and reshipment at Sydney—Fire in stevedore's stores at Sydney—Who liable.

*Australian Agricultural Co.* v. *Saunders*, L. R. 10 C. P. 668; 44 L. J. C. P. 391.

134. Isle of Man—Not within the United Kingdom.

*Davison* v. *Farmer*, 6 Ex. 242; 20 L. J. Ex. 177.

135. Jersey—Debtor resident in—Statute of Limitations.

*Flood* v. *Patterson*, 29 Beav. 295; 30 L. J. Ch. 486. *Vide* now 19 & 20 Vict. c. 97, s. 12.

136. Judge of Crown colony—Pension of—Vesting of in trustee on bankruptcy—Apportionment of between pensioner and creditors—32 & 33 Vict. c. 71, ss. 4, 15, 17, 88-90.

*Ex parte Huggins*, L. R. 21 Ch. D. 85.

137. Judgment of Court of Antigua—Conclusiveness of—Action in England on—Discovery and commission to examine witnesses abroad in aid of defence—Refusal of.

*Martin* v. *Nicolls*, 3 Sim. 458.

138. Judgment in Supreme Court of Jamaica—Action on—Ground of need not be shown.

*Walker* v. *Witter*, 1 Dougl. 1.

139. Judgment of Supreme Court of Jamaica—Held binding in England.

*Galbraith* v. *Neville*, 1 Dougl. 6, note.

140. Judgment by default in Supreme Court of Jamaica—Action on—Statement in judgment that defendant appeared by attorney—Proof of attorney's authority not necessary.

*Molony* v. *Gibbons*, 2 Campb. 502.

141. Judgment of Court of St. Vincent—Declaration in debt on—Statement that Court had jurisdiction—No need for.

*Robertson* v. *Struth*, 5 Q. B. 941; D. & M. 773.

142. Judgment in King's Bench at Quebec—Execution stayed—Effect of in action on account stated and on the judgment—Evidence of debt—Distinction between judgments in foreign and home Courts.

*Hall* v. *Odber*, 11 East, 118.

143. Judgment of colonial Court (Victoria)—Plea of *nul tiel record*—Bad as amounting to traverse of immaterial allegation.

*Philpott* v. *Adams*, 7 H. & N. 888; 31 L. J. Ex. 421.
S. P. *Chapman* v. *Sherrie*, 5 Ir. C. L. R. 36.

144. Decree of colonial Court (Newfoundland) for payment of balance due on a partnership account—Action for debt upon—Held maintainable.

*Henley* v. *Soper*, 8 B. & C. 16; 2 M. & R. 153.

145. Decree of Supreme Court of Newfoundland—Defendant out of jurisdiction—Authority of attorney made on defendant's departure—Sufficiency of to support decree—Pleading.

*Simms* v. *Henderson*, *Henderson* v. *Henderson*, 11 Q. B. 1015; 17 L. J. Q. B. 209.

146. Decree on Equity side of Supreme Court of Newfoundland established by 5 Geo. 4, c. 67—Action of debt on held maintainable—Anything constituting defence in the colonial Court to be relied on there—Presumption that right done.

*Henderson* v. *Henderson*, 6 Q. B. 288; 13 L. J. Q. B. 274.

147. Decree in Equity of Supreme Court of Newfoundland—No injunction against execution of in Court of Chancery in England—Appeal to Privy Council appropriate.

*Henderson* v. *Henderson*, 3 Hare, 100.

148. Decree in England to redeem West India estate—Bill to foreclose by mortgagees in Court of Jamaica—All parties in England—Injunction to restrain proceedings in the colonial Court.

*Beckford* v. *Kemble*, 1 Sim. & S. 7.

149. Decree in Court of Chancery of Island of Grenada against late partners for partnership debts—Payment by plaintiff—Conclusiveness against defendant in action on covenant to indemnify plaintiff against debts due from late partnership of plaintiff, defendant and another.

*Tarleton* v. *Tarleton*, 4 M. & S. 20.

150. Judgment of Court of Gold Coast colony—Insolvency of plaintiff under Act of colony by reason of judgment—Assignee in England — Collusion between him and judgment creditor — Prayer for assignee to be decreed to prosecute appeal, or plaintiff enabled to prosecute appeal in assignee's name—Insufficient averment of failure to obtain justice in the colonial Courts.

*Smith* v. *Moffatt*, L. R. 1 Eq. 397; 35 L. J. Ch. 19.

151. Judgment of Court of Mauritius—Law of the colony as to suits against absent party—Process to be served on King's Attorney-General in colony—No express provision that Attorney-General should communicate with party—Judgment against party resident within jurisdiction of Court at time cause of action accrued—Withdrawal of party before proceedings commenced—Allegation that judgment contrary to law of country where given—Proof of.

*Becquet* v. *McCarthy*, 2 B. & Ad. 951.

152. Judgment in island of St. Christopher for defendant in action for same causes—Non-appearance on record that judgment final and conclusive in colony itself—Plea bad for.

*Plummer* v. *Woodburne*, 4 B. & C. 625; 7 D. & R. 25.

153. Judgment in Admiralty Court of Sierra Leone against defendant then being within the jurisdiction of that Court—Subsequent action in England for same cause against same defendant—Previous judgment no defence.

*Smith* v. *Nicolls*, 5 Bing. N. C. 208; 7 Sc. 147.

154. Judgment by default in colony (Tobago)—Defendant summoned by nailing up a copy of declaration at the Court-house door—Not shown defendant ever in colony, or subject to jurisdiction of colonial court when suit commenced or afterwards—Law of colony.

*Buchanan* v. *Rucker*, 9 East, 192.

155. Judgment of Supreme Court at Sydney, New South Wales—Non-conclusiveness of in bill by same plaintiff in England in which allegations and equity different—Delay of plaintiff—Banking Co. in England to carry on business in colonies, especially Australia—"Colonial shares"—English shares transferable in colony or England—Transferee of shares—Lien of Co. for debt of original holder.

*Hunter* v. *Stewart*, 31 L. J. Ch. 346; 4 De G. F. & J. 168.

156. Judgment at Cape of Good Hope—Action on—Cape Ordinance as to insolvency—Sequestration of insolvent's estate under—Suppression of execution of judgment pending sequestration—No discharge of insolvent—Insolvent's real estate out of colony.

*Frith* v. *Wollaston*, 7 Ex. 194; 21 L. J. Ch. 108.

157. Judgment of Admiralty Court in Malta—Suit for damages awarded by—Transcript of proceedings—Express statement of sentence of Admiralty Court and that defendant within jurisdiction.

*Obicini* v. *Bligh*, 8 Bing. 335; 1 M. & Sc. 477.

158. Jurisdiction—Plaintiff in England—Defendants executors of deceased partner, some in England, some in Jamaica—Suit properly instituted in England.

*Hendrick* v. *Wood*, 30 L. J. Ch. 583.

159. Kidnapping Act, 1872 (35 & 36 Vict. c. 19)—Prohibition of carrying Polynesian labourers in unlicensed ships—Penalty, forfeiture of ship—Unlicensed carrying by master without owner's authority—Seizure and condemnation of ships—Act of barratry—Recovery against underwriters.

*Australasian Insurance Co.* v. *Jackson*, 33 L. T., N. S., 286.

160. Island of Sark—Bill to redeem mortgage of or to foreclose—Plea, island part of Duchy of Normandy with its own laws and under jurisdiction of courts of Guernsey, overruled—Mortgage of whole island—Defendant within jurisdiction of English court—*Equitas agit in personam.*

*Toller* v. *Carteret*, 2 Vern. 494.[1]

161. Isle of Man—Question concerning right and title to—Determination of in court of equity in England.

*Earl of Derby* v. *Duke of Athol*, 1 Ves. 202.[1]

162. Lands out of jurisdiction—Power of court of equity over by decree *in personam*—Boundaries of two provinces in North America—Specific performance decreed of articles executed in England concerning.

*Penn* v. *Lord Baltimore*, 1 Ves. 444; 2 W. and T. 5th ed. 939.[1]

163. Lands in British dominions abroad—Equity jurisdiction *in personam* in transactions concerning—Purchase of estate in West Indies by creditor under his own execution — Held security for debt, expenses, and incumbrances with interest—Reconveyance.

*Lord Cranstown* v. *Johnson*, 3 Ves. 170.

164. Lands in colonies—No doubt of jurisdiction upon contracts as to land in West Indian colony if parties in England.

*Jackson* v. *Petrie*, 10 Ves. 164.

165. Land in Jamaica—Law of evidence in Jamaica applied in English courts in dealing with—Bill for payment of legacies, &c. out of, and to settle boundaries of, entertained in Court of Chancery in England.

*Tulloch* v. *Hartley*, 1 Y. & C. C. C. 114.

166. Land in Demerara—Injunction on terms to restrain proceedings instituted in Demerara to recover—Order for a consignee and manager of the estate and produce — Questions between the parties connected with the estate more conveniently determinable together in England.

*Bunbury* v. *Bunbury*, 1 Beav. 318. And see Seton on Decrees, 4th ed. i. 448 *seqq.*

167. Lands in Island of Nevis, West Indies—Mortgage—Foreclosure, jurisdiction to decree—English mortgagor and mortgagee—Decree *in personam.*

*Paget* v. *Ede*, L. R. 18 Eq. 118; 43 L. J. Ch. 571.

[1] See *Companhia de Mocambique* v. *British South Africa Co.*, L. R. (1892) 2 Q. B. 358; *Attorney-General* v. *Stewart*, 2 Mer. 143, *post*, p. 172.

168. Land in Demerara—Contract for mortgage—Construction before court of competent jurisdiction in the colony — Injunction against foreclosure and sale refused.
*White* v. *Hall*, 12 Ves. 321.

169. Lands at St. Christopher's—Bill to deliver possession of—No jurisdiction to entertain in English Court of Chancery.
*Roberdean* v. *Rous*, 1 Atk. 543.[1]

170. Lands in Pennsylvania (when English colony)—Bill by heir-at-law to try validity of brother's will of dismissed—Will of lands lying in colony not triable in Westminster Hall.
*Pike* v. *Hoare*, 2 Eden, 182.[1]

171. Local action—Trespass for entering house in Canada—Not maintainable in England.
*Doulson* v. *Matthews*, 4 T. R. 503.[1]

172. Land in colonies—Title to, questions of—To be decided first in local courts, whence appeal to King in Council.
*Attorney-General* v. *Stewart*, 2 Mer. 143.

173. Land in Canada vested in Queen by colonial Act for public purposes—No jurisdiction under Petition of Right Act, 1860 (23 & 24 Vict. c. 34), in Court of Chancery against Crown as trustee of such land present within the jurisdiction.
*Re Holmes*, 2 Joh. & H. 527; 31 L. J. Ch. 58, *nom.* *Holmes* v. *The Queen*.

174. Land in Australia—Rent-charge upon—Action of debt for arrears—Local venue.
*Whitaker* v. *Forbes*, L. R. 1 C. P. D. 51.[1] See now 38 & 39 Vict. c. 77, Ord. xxxvi. r. 7.

175. Lands in colonies—Devise of—Construction of as to lands in colony subject to English law (New South Wales)—Inquiry as to effect of will as to lands in Ceylon by law in force in that colony.
*Greenway* v. *Greenway*, 2 De G. F. & J. 128; 29 L. J. Ch. 601.

176. Lands situate out of the jurisdiction (Demerara)—Proceeds of sale of—Enforcing equities to which land within jurisdiction subject—Capability of fulfilment of contract by *lex loci rei sitæ* — Proceeds of sale of lands without jurisdiction *in specie* within the jurisdiction — Rights of parties in governed by *lex*

[1] See *Companhia de Mocambique* v. *British South Africa Co.*, L. R. (1892) 2 Q. B. 358.

*loci rei sitæ*—Restraints upon alienation of land governed by *lex loci rei sitæ*.

*Waterhouse* v. *Stansfield*, 9 Hare, 234; 21 L. J. Ch. 881.

177. Lands in British Guiana—Rights in by way of charge, mortgage, or lien, how created by law of colony—Judicial act of Supreme Court of Civil Justice in colony—Assignment in England of benefit of contract for purchase of land in colony as security for moneys lent to complete purchase—Not enforceable against *lex loci rei sitæ*—Rights of general creditors of purchaser over the land after payment of purchase-money.

*Waterhouse* v. *Stansfield*, 10 Hare, 254.

178. Lands in Jamaica—Agreement between A. and B. for lease of twenty-one years—Entry of B. into possession—Death of B. without paying rent—A. not entitled to rank as specialty creditor against B.'s estate for rent due—No relation of landlord and tenant created—No privity of estate in case of lands out of England.

*Vincent* v. *Godson*, 4 De G. M. & G. 546; 24 L. J. Ch. 121.

179. Lands in Demerara—Marriage settlement of for benefit of wife and children—Lands held in fee by intended wife—Subsequent mortgage by husband and wife to persons with notice of settlement—Nullity of settlement by law of Demerara—Validity of mortgage—Attachment of equity of wife and children on person of husband not on estate.

*Martin* v. *Martin*, 2 Russ. & My. 507.

180. Lands in West Indies—Advances for supplies to estate—Acting consignees—Tenant in common—Nature of the subject requiring expenditure — Allowances in respect of advances—Lien for.

*Scott* v. *Nesbitt*, 14 Ves. 438.

181. Lands in Jamaica—Supplies furnished to estates—Lien for against produce of—Agreement implied from course of business and conduct of parties.

*Simond* v. *Hibbert*, 1 R. & M. 719.

182. Lands in Jamaica—West India estate, consignee of—Payments by on account of annuity charged on estate—Reimbursement out of compensation money under Slavery Abolition Act.

*Shaw* v. *Simpson*, 1 Y. & C. C. C. 732.

183. Lands in Tobago—West India estate, consignee of appointed by court—Not entitled to payment during office of balance out of compensation under Slavery Abolition Act.

*Farquharson* v. *Balfour*, 8 Sim. 210.

184. Lands in Tobago—Consignee of West India estate appointed by court—Discharge of at own request—Large balance due to—Indemnification of out of slaves' compensation money paid into court—Priority to mortgagee—Mortgage prior to suit—Mortgagee not party to suit till after consignee's discharge—Consignee appointed after mortgagee party to suit and slaves' compensation money paid into court—Large balance due to—Payment to after discharge.

*Morrison* v. *Morrison*, 2 Sm. & G. 564.

185. Lands in Dominica—Absolute owner in fee of—Appointment of manager by—Lien of manager on inheritance for salary and expenses—Manager appointed by tenant for life—No lien on inheritance on death of tenant for life—Lien on emblements—Refusal of manager to give up possession to remainderman—Treatment of as mortgagee—Accounts—Manager appointed by mortgagor—Death of mortgagor—No lien of manager against non-acquiescent mortgagee.

*Bernard* v. *Davies*, 32 L. J. Ch. 41; 31 Beav. 429, *nom.* *Bertrand* v. *Davies*.

186. Lands in West Indies—Devise on trust for sale and distribution of proceeds among testator's children—Suit for administration—Appointment of consignees of estate—Settlement of children's shares—Payments by consignees sanctioned by court—Consignees' right to charge upon *corpus* of trust estate.

*Morison* v. *Morison*, 7 De G. M. & G. 214.

187. Lands in Jamaica—Trustee and executor of owner of one moiety of plantation—Taking of lease by of other moiety—Suit in England for execution of trusts of will—Persons in Jamaica appointed receivers and managers of testator's estates—Possession by of entire plantation—Proceeds paid into court in England—Payment of rent for moiety leased—Reference as to dilapidations.

*Neate* v. *Pink*, 3 Mac. & G. 476; 21 L. J. Ch. 574.

188. Land in Trinidad—Legal estate in defendants—Beneficial interest bound by creditors' deed—One defendant British subject resident in Trinidad—Leave given to serve writ on in Trinidad—Rules of Supreme Court, 1883, Ord. xi. r. 1 (*g*).

*Jenney* v. *Mackintosh*, L. R. 33 Ch. D. 595.

189. Law, colonial—Act of colonial legislature—Rules of construction—English authorities on Act *in pari materia*.

*Catterall* v. *Catterall*, 1 Robert. 580.

190. Law, colonial—Must be proved as matter of fact.

*Astley* v. *Fisher*, 6 C. B. 572; 18 L. J. C. P. 59.

191. Law, colonial—Proof of in Admiralty Court—Strictness of courts of common law not adhered to.

*The Peerless*, 1 Lush. 30; 29 L. J. Adm. 49.

192. Law, colonial—Tobago—Measure of damages on dishonour of bill of exchange in England by bankruptcy of acceptor—Re-exchange.

*In re Gillespie, Ex parte Robarts*, L. R. 18 Q. B. D. 286.

193. Law, colonial, notice of—Residence in England of member of Co. carrying on business in New South Wales—Colonial Act enabling chairman of Co. to sue and be sued for Co.—Action against member in England on judgment recovered in colony against chairman—Cumulative remedy against members—Foreign judgment, how far conclusive.

*Bank of Australasia* v. *Harding*, 9 C. B. 661; 19 L. J. C. P. 345. See *post*, 199.

194. Law, foreign, proof of—Application of English law in absence of such proof—Lands in a colony.

*Bentinck* v. *Willink*, 2 Hare, 1.

195. Law, foreign, evidence of—Knowledge of derived from study—Admissibility.

*In the Goods of Bonelli*, L. R. 1. P. D. 69; 45 L. J. P. D. 42.

196. Legacy duty—Testator domiciled Englishman—Appointment of as Chief Justice of Ceylon—Removal of to and residence in Ceylon—Probate of will in Ceylon—Liability of personal estate to duty—Domicile.

*Attorney-General* v. *Rowe*, 1 H. & C. 31; 31 L. J. Ex. 314.

197. Legacy duty—Testator British subject—Domicile in British colony (Demerara)—No legacy duty in colony—Probate taken out in Scotland—Freedom from legacy duty.

*Thompson* v. *H. M. Advocate-General*, 12 C. & F. 1; 13 Sim. 153.

198. Legal process, unconscientious use of—Acquisition by creditor of estate in West Indies by—Reconveyance on payment of what due—Deprivation of costs.

*Lord Cranstown* v. *Johnston*, 5 Ves. 277.

199. Legislature of New South Wales, Act of—Actions to be by and against chairman of Co.—Execution against member for time being—Authority to pass such Act—Repugnancy to law of England or natural justice—Effect of judgment beyond the territory—Extent to which foreign or colonial judgment examinable—No merger in case of foreign or colonial judgment against co-contractor.

*Bank of Australasia* v. *Nias*, 16 Q. B. 717; 20 L. J. Q. B. 284. See *ante*, 193.

200. Lien—Claim of attorney of Supreme Court of New South Wales on deed for costs due to him by plaintiff—Want of allegation that law of New South Wales not inconsistent with lien claimed—9 Geo. 4, c. 83, s. 16, effect of—Colonial law, proof of.
*Astley* v. *Fisher*, 6 C. B. 572; 18 L. J. C. P. 59.

201. Life insurance—"Never been heard of"—Evidence of being seen in Melbourne, New South Wales—Misdirection of jury.
*Prudential Assurance Co.* v. *Edmonds*, L. R. 2 App. 487.
Cp. *ante*, 22, 74, 75.

202. Limitations, Statute of—Plea of judgment on in Isle of Man—No bar to action in England—Attorney's bill, action on—Continuous employment.
*Harris* v. *Quine*, L. R. 4 Q. B. 653; 38 L. J. Q. B. 331; 10 B. & S. 644.

203. Limitations, Statute of (3 & 4 Will. 4, c. 27)—Annuity charged on real estate in Jamaica—Last payment in 1842—Rents and profits since 1870—Arrears—Statute not applicable to Jamaica.
*Pitt* v. *Lord Dacre*, L. R. 3 Ch. D. 295; 45 L. J. Ch. 796.

204. Limitations, Statute of, or possessory law of Jamaica, 4 Geo. 2—Not merely bar of legal remedy—Seven years' possession converted into positive absolute title—No exception in favour of absentees—Trustees, meaning of exception as to—Tenants for life—Statutes, construction of.
*Beckford* v. *Wade*, 17 Ves. 87.

205. Loan—Usury—Consignment of goods to Gibraltar—Advance of two-thirds invoice price on delivery of bills of lading and invoices in London—Bill at 90 days at 6 per cent.—Usual rate in Gibraltar—Not loan in England nor usurious.
*Harvey* v. *Archbold*, 3 B. & C. 626; Ry. & M. 184.
(Usury laws repealed by 17 & 18 Vict. c. 90.)

206. Lunatic in colony—Pauper—Married woman—Separate estate—Accrued and future dividends paid to Master in Lunacy for maintenance—Colonial statute.
*In re Baker's Trusts*, L. R. 13 Eq. 168; 41 L. J. Ch. 152.

207. Lunatic, not so found by inquisition, detained in asylum in New South Wales—Entitled for life to income, and absolutely to accumulations, from one-third of testator's residuary estate—Maintained for years by Colonial Government at total expense of £803—Powers of Master in Lunacy in New South Wales to sue for and receive debts due to patients—Property of patients not vested in him—Payment to him of £803, and income of remainder of fund, and of patient's share of income of residuary so long as lunatic detained as insane in New South Wales—New South Wales Lunacy Act, 42 Vict. c. 7.
*In re Barlow's Will*, L. R. 36 Ch. D. 387.

208. Married woman—Acknowledgment by under 3 & 4 Will. 4, c. 74—Affidavit of verification in Guernsey.

*Re Mann*, L. R. 10 C. P. 473.

209. Married woman—Acknowledgment by under 3 & 4 Will. 4, c. 74—Taken before special commissioners in Melbourne, New South Wales—Documents returned without commission—Filing—Omission of one of three Christian names of a commissioner—Affidavit of identity.

*Re Edsall, re Thomas*, L. R. 10 C. P. 472; 44 L. J. C. P. 228.

210. Married woman—Commission for taking acknowledgment of in Sydney, New South Wales—Blank for her Christian name—3 & 4 Will. 4. c. 74.

*In re Apperton*, 1 C. B. 447.

211. Married woman—Commission for taking acknowledgment in Australia—Blank for Christian name of husband—3 & 4 Will. 4, c. 74, s. 83.

*In re Legge*, 15 C. B. 364.

212. Married woman—Certificate of acknowledgment and affidavit of verification taken in New South Wales—Erasure in material part of affidavit—Evidence that erasure made before acknowledgment taken and affidavit sworn—Reception and filing of.

*In re Bingle*, 15 C. B. 449.

213. Married woman — Acknowledgment by at Sydney — Jurat of affidavit of due taking—Interlineation—Erasure—Refusal to file—Refusal to enlarge time for returning the commission.

*In re Tierney*, 15 C. B. 761. As to affidavits verifying acknowledgments of deeds by married women in the colonies, *vide* Reg. Gen. C. P. 13 Jan. 1863, 13 C. B., N. S., 406.

214. Marriage at Gibraltar between Frenchman and Englishwoman—Residence of husband in England—Domicile in France—Divorce granted in England—20 & 21 Vict. c. 85, ss. 27, 31.

*Niboyet* v. *Niboyet*, L. R. 4 P. D. 1.

215. Marriage, nullity of—*Lex loci* of Holland—Celebration at Cape of Good Hope between British subjects by chaplain of British forces in occupation under capitulation.

*Ruding* v. *Smith*, 2 Hagg. Consist. 371.

216. Marriage, nullity of — Decree of by court in New Zealand—Return of parties to England—Petition by to High Court in England for variation of settlements—Application refused for want of jurisdiction—20 & 21 Vict. c. 85 s. 45—22 & 23 Vict. c. 61, s. 5.

*Moore* v. *Bull*, L. R. (1891) P. 279.

217. Marriage in British colony—Proof of solemnisation by clergyman

of Church of England according to rites of that church—Sufficient evidence for purpose of divorce.

*Limerick* v. *Limerick*, 4 S. & T. 252; 32 L. J. P. M. & A. 92.

218. Marriage in British possession (St. Lucia)—Rites and ceremonies of Church of England—Priest in holy orders—Parish church—Licence duly obtained—Validity.

*Ward* v. *Dey*, 1 Robert. 759.

219. Marriage in Ireland — Subsequent cohabitation in English colony—Divorce in Cape Colony—Presumption of domicile—Marriage of divorcee and co-respondent in England—Validity of—Roman-Dutch law—Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93).

*Scott* v. *H. M. Attorney-General*, L. R. 11 P. D. 128.

220. Marriage—9 Geo. 4, c. 83—Act of New South Wales, 1834—Non-compliance with provisions of—No words expressly creating nullity—Validity.

*Catterall* v. *Sweetman*, 1 Robert. 304.

221. Marriage, proof of—Collated copy of entry in register at Barbadoes—Admitted in evidence.

*Cood* v. *Cood*, 1 Curt. 755.

222. Marriage by domiciled Englishman at the Mauritius—French law in force there—Settlement in French language and form—Declaration in that parties intended to marry according to laws of England and claim their benefit—Acknowledgment by husband of receipt of sum of wife's—Stipulation as to investment of—Sum not actually received—Death of husband intestate—Right of widow to receive sum out of assets—Distributive share of residue.

*Lang* v. *Lang*, 8 Sim. 451; 6 L. J. Ch. 324.

223. Marriage, presumption of—Laws and customs of uncivilised community in New Zealand previously to its becoming a British colony—Insufficient evidence.

*Armitage* v. *Armitage*, L. R. 3 Eq. 343.

224. Marriage settlement—Jamaica estate limited to trustees for term of years to raise a sum to be laid out in land in England to be settled on husband for life, remainder to wife for life—Option to wife to have annuity out of the land—Mortgage by wife and husband of the Jamaica estate in fee before sum raised—Wife and husband resident in England—Acknowledgment of deed by wife before magistrate—Equivalent by Jamaica law to levying fine—Wife barred of claim to provision by settlement.

*Forbes* v. *Adams*, 9 Sim. 462; 8 L. J. Ch. 116.

225. Marriage settlement, construction of—Domicile of settlor—Law of country where settlement executed—Jurisdiction of court.

*Rainy* v. *Ellis*, 26 L. T., N. S., 602.

226. Merchant Shipping Act, 1854—Applies to colonies—Lien of master for wages in Vice-Admiralty Court under s. 191 not affected by additional provision in favour of seamen in s. 209—Right of master, compelled by ill-health to leave ship abroad, to immediate action for wages—Wages thus paid allowed under bottomry bond—*Onus* on owner to show amount improper.

*The Rajah of Cochin*, Swab. 473.

227. Mortgage, equitable—Canada bonds, deposit of—Pledgee of chattels—No right of foreclosure.

*Carter* v. *Wake*, L. R. 4 Ch. D. 605; 46 L. J. Ch. 841.

228. Mortgage of estates in Ceylon to bank—Second mortgage to R. & Co.—Covenant by bank to transfer mortgage to R. & Co. on payment of mortgage debt—Covenant not duly executed by law of Ceylon—Payment by R. & Co. with funds advanced by S. on agreement for transfer of mortgage to him—Letter of R. & Co. to bank directing them to transfer mortgage to S.—Possession subsequently demanded and obtained by R. & Co. from bank as next registered incumbrancers—Bill by S. against bank for breach of trust—Equitable assignment not constituted by law of Ceylon—No defence by bank to demand of R. & Co.—Bill dismissed.

*Sichel* v. *Raphael*, 34 L. J. Ch. 106.

229. Mortmain, statute of, 9 Geo. 2, c. 1—Does not extend to island of Grenada, W. Indies—Questions of title to land in colonies to be decided first in local courts, whence appeal to King in Council.

*Attorney-General* v. *Stewart*, 2 Mer. 143. *Vide post*, 290.

230. Offences committed in colonies by persons holding and in execution of public employment there—Trial and punishment of in Great Britain—42 Geo. 3, c. 85—Does not extend to felonies.

*Rex* v. *Shawe*, 5 M. & S. 403.

231. Offices—Sale of—5 & 6 Ed. 6, c. 16—Does not extend to Barbadoes—Penal statutes do not extend to new things not *in esse* at time of making.

*Dawes* v. *Painter*, Freem. 175.

232. Office in colony—Information for attempting to bribe Privy Councillor to procure—Clerk to Supreme Court of Jamaica.

*Rex* v. *Vaughan*, 4 Burr. 2494.

233. Pardon, conditional—Effect of—6 & 7 Vict. c. 7—Subsequent vesting of share under settlement containing clause against alienation by beneficiaries—Forfeiture to Crown—Forfeiture for attempted alienation.

*Barnett* v. *Blake*, 2 Drew. & Sm. 117; 31 L. J. Ch. 898, *nom. Blake* v. *Barnett*; and *cf. Gough* v. *Davies*, 2 K. & J. 623; 25 L. J. Ch. 677; *ante*, 97.

234. Patent law—License to use invention in United Kingdom—Prior

use in British colony of Natal no objection to validity of patent in United Kingdom.

*Rolls* v. *Isaacs*, L. R. 19 Ch. D. 268.

235. Payment out of court—Power of attorney from petitioner resident in New Zealand—Witness also resident in New Zealand—Execution of power proved by affidavit of petitioner's handwriting.

*Jearrad* v. *Tracey*, 11 W. R. 97.

Petition of right—See *Re Holmes*, *ante*, 166.

236. Power of attorney—Execution of by resident of British Honduras in the colony before notary public of the colony—Notary's certificate under his official seal of the signature—Sufficient under 15 & 16 Vict. c. 86, s. 22.

*Armstrong* v. *Stockham*, 24 L. J. Ch. 176.

237. Power of attorney—Execution of in British Honduras—National seal to—Judicial cognisance of—15 & 16 Vict. c. 86, s. 22.

*Re Goss's Estate*, 12 Jur., N. S., 595; and see *Jearrad* v. *Tracey*, *ante*, 242.

238. Principal and agent—Undisclosed principal in New Zealand—Consignors—Sub-contract of consignee in Glasgow with defendants in London—Insolvency of consignee—Right of consignee to follow goods or proceeds—Privity of contract—Fiduciary character of defendants.

*New Zealand & Australian Land Co.* v. *Watson*, L. R. 7 Q. B. D. 374.

239. Principal and agent—Agent in Australia of English Assurance Co.—Acceptance of life policy by through medium of sub-agent—Company bound by.

*Rossiter* v. *Trafalgar Life Assurance Association*, 27 Beav. 377.

240. Probate in Jamaica of will and codicil—Certified copy of will and codicil sent to England by secretary of island, but not probate—Certificate of secretary that copy true copy—Probate granted till more authentic copy brought in.

*In the Goods of Turner*, 36 L. J. P. & M. 82.

241. Probate in New South Wales to A. as executor according to tenor—Executorship not constituted by words of will—Administration granted to A. as person entitled to administer by grant from proper court in New South Wales—20 & 21 Vict. c. 77, s. 73.

*In the Goods of Earl*, L. R. 1 P. & D. 450; 36 L. J. P. & M. 127.

242. Probate of Supreme Court of New Zealand—Petition for payment of money out of court under the will—English probate necessary.

*Ex parte Limehouse Board of Works, In re Vallance*, L. R. 24 Ch. D. 177.

243. Probate—Two wills—Estates in England and in Canada—Independent dispositions — Probate granted of English will on affidavit exhibiting copy of Canadian will—Statement indorsed on probate of filing of such affidavit—Affidavit that movable chattels bequeathed in each will actually at death of testator in country to which will disposing of them referred.

*In the Goods of Seaman*, L. R. (1891) P. 253.

244. Probate—Two wills—Estates in England and in S. Africa—Independent dispositions—Probate granted of English will on affidavit exhibiting attested copy of S. African will—Statement indorsed on probate of filing of such affidavit.

*In the Goods of Callaway*, L. R. 15 P. D. 147.

245. Probate—Two wills—One limited to property in England, one to property in Tasmania—Separate executors—Probate granted of both papers as together containing will of deceased.

*In the Goods of William Harris*, L. R. 2 P. & D. 83.

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# APPENDIX I.

## In the Privy Council.

## ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

AGNES ROBINSON, Plaintiff in the Superior Court, and Respondent in the Court of Queen's Bench . . . . . *Appellant,*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY, Defendants in the Superior Court, and Appellants in the Court of Queen's Bench . . . . . *Respondents.*

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AGNES ROBINSON, Plaintiff in the Superior Court and Respondent in the Court of Queen's Bench . . . . . *Appellant,*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY, Defendants in the Superior Court and Appellants in the Court of Queen's Bench . . . . . *Respondents.*

## CASE FOR THE APPELLANT.

THIS is an appeal by special leave from a judgment of the Supreme Court of Canada, dated the 22nd of June, 1891, whereby a judgment of the Court of Queen's Bench for Lower Canada, Appeal Side, District of Montreal, dated the 19th of June, 1890, which had affirmed a judgment, dated the 31st of January, 1889, of the Superior Court in Review, was, by a majority of four to one judges of the Supreme Court, reversed, and judgment given in favour of the present respondents against the present appellant, dismissing and refusing the present appellant's motion for judgment upon and in accordance with the verdict of the jury in the cause, and dismissing and refusing the present respondents' motions for a new trial and in arrest of judgment, but granting and allowing the present respondents' motion for judgment *non obstante veredicto.*

The Supreme Court gave judgment against the appellant on the ground that her action was barred by prescription.

The appellant is the widow of Patrick Flynn, who, on the 27th of August, 1882, whilst in the employ of the respondents, was injured by the negligence and carelessness of the officers

and employées of the respondents, and as the result of such injury Patrick Flynn died in the City of Montreal on the 13th of November, 1883, not having instituted any action against or received any indemnity or satisfaction from the respondents.

Record, p. 4. On the 17th of May, 1884, the appellant commenced the present action, as well for herself as in her capacity of tutrix of her minor child, Agnes Mary Flynn, then aged eight years, to recover damages occasioned by the death of the said Patrick Flynn. The action was brought under Article 1056 of the Civil Code of Lower Canada, which is in the terms following :—

"In all cases where the person injured by the commission of "an offence or a quasi-offence dies in consequence without "having obtained indemnity or satisfaction, his consort and "his ascendant and descendant relations have a right, but only "within a year after his death, to recover from the person who "committed the offence or quasi-offence, or his representatives, "all damages occasioned by such death. In all cases no more "than one action can be brought in behalf of those who are "entitled to the indemnity, and the judgment determines the "proportion of such indemnity which each is to receive. These "actions are independent, and do not prejudice the criminal "proceedings to which the parties may be subject."

p. 6. The respondents pleaded that the accident in question had not been caused by any fault or negligence on their part, but that it had been caused solely by the negligence of the said Patrick Flynn.

p. 8. The action was tried on the 27th and 28th of April, 1885, and the jury found a verdict for the plaintiff, the present appellant, and awarded $2000 to her as her damages, suffered by reason of the death of her husband, and $1000 to Agnes Mary Flynn, her minor child. Whereupon the appellant moved the Superior Court in Review for judgment upon and in accordance

p. 10. with the finding of the jury, and the respondents moved for a new trial on the ground, amongst others, that the judge at the trial misdirected the jury in telling them that in assessing the damages they had a right to consider the anguish and mental

p. 11. sufferings of the widowed mother and orphan child. On the 30th of June, 1885, the Supreme Court in Review, by a majority of two to one, refused the appellant's motion for judgment, and granted the respondents' motion for a new trial.

On the 16th of January, 1886, the Court of Queen's Bench, on appeal, reversed the judgment of the Superior Court in Review, and gave judgment for the appellant. Record, p. 12.

On the 20th of June, 1887, the Supreme Court of Canada reversed the judgment of the Court of Queen's Bench, and gave judgment refusing the appellant's motion for judgment and granting the respondents' motion for a new trial.

On the 19th of December, 1887, the respondents obtained permission to amend their pleadings, and amended them accordingly, but such amended pleadings did not contain any plea that the appellant's action was barred by prescription.

The action came on for trial a second time on the 28th and 29th of November, 1888, and resulted in a verdict for the appellant, the jury assessing her damages at $4500, and those of her minor child at $2000. Thereupon the respondents made to the Superior Court in Review three motions.

(1) A motion for a new trial for reasons not material to this appeal.

(2) A motion for judgment *non obstante veredicto* on the ground that Patrick Flynn, the husband of the appellant, was injured on the 27th day of August, 1882, and died on the 13th November, 1883, and the right of the appellant to recover damages was prescribed and extinguished before the death of Patrick Flynn, and the action of the appellant was not instituted until the 17th of May, 1884, and by law and the statutes in such case made and provided all rights of action against the respondents were prescribed before the institution of this action, and the plaintiff never had, or had not at the time of the institution of the suit, any right of action. p. 25.

(3) A motion for arrest of judgment on the same grounds as the motion for judgment *non obstante veredicto*, and the appellant moved for judgment in accordance with the findings of the jury. p. 26.

The contention was thus for the first time raised by the respondents that the appellant's action was prescribed.

On the 31st of January, 1889, the respondents' three motions were dismissed, and the appellant's motion for judgment was granted by a majority of two to one of the judges of the Superior Court in Review.

It was contended on the part of the respondents that at the time of his death Patrick Flynn's action against the respondents

was prescribed by Article 2262 (2) of the Code, and the appellant only having the same right of action as her deceased husband, her action was also prescribed, and the following Articles of the Code were relied on in favour of such prescription, and as showing that it need not be pleaded.

The following actions are prescribed by one year :—

Article 2262. (2) For bodily injuries saving the special provisions contained in Article 1056 and cases regulated by special laws.

Article 2188. The Court cannot, of its own motion, supply the defence resulting from prescription, except in such cases where the right of action is denied.

Article 2267. In all the cases mentioned in Articles 2250, 2260, 2261, and 2262, the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired.

On the part of the appellant it was contended that the action of Patrick Flynn against the respondents was not prescribed by one year under Article 2262 (2), but was prescribed by two years under Article 2261 (2); and as Flynn died within two years of the accident, his action would not have been prescribed at his death.

Article 2261 (2) is as follows:—

The following actions are prescribed by two years.

For damages resulting from offences or quasi-offences whenever other provisions do not apply.

The grounds on which it was suggested that Article 2262 (2) was not applicable are that the actions for "bodily injuries" mentioned in that Article are not actions for injuries such as Flynn suffered through the respondents' negligence, but that "bodily injuries" are injuries such as result, for instance, from an assault or wrongful overt act, and that this interpretation of Article 2262 is borne out by the French version of the Article, which renders the words "bodily injuries" as "*injures corporelles*" and not *dommages corporels*, making use of the word "injuries," which means injuries inflicted with malice. The remarks of Mr. Justice Taschereau on this are to be found at page 29 of the Record.

It was further contended that by the very words of Article 2262 (2) actions brought under Article 1056 were exempted from its operation.

The main contention, however, of the appellant is that even if Patrick Flynn's action was prescribed at his death, yet that

does not affect the appellant's right to bring the present action. The words of Article 1056 are clear. By it a right is given to the appellant to recover all damages occasioned by the death; the right is given her personally, and not in any way as representing her husband; the only limitations on the right are that the deceased must not have obtained any indemnity or satisfaction, and that the action must be brought within a year of the death.

The reasons of Mr. Justice Taschereau in favour of this contention are to be found at page 30 of the Record, and those of Mr. Justice Davidson at page 33 of the Record.

The majority of the Superior Court in Review were also of opinion that the prescription relied on to be available should have been pleaded. The reasons of Mr. Justice Taschereau for this opinion are to be found at pages 29 and 30 of the Record, and those of Mr. Justice Davidson at page 33 of the Record. Mr. Justice Wurtele, who dissented from the majority of the Court, and held that Patrick Flynn's action being prescribed at his death the appellant's action was also prescribed, based his decision not on the words of Article 1056, but on the interpretation that had been given in England to Lord Campbell's Act, holding that the action under Article 1056 was the same as the action under Lord Campbell's Act.

The appellant submits that, even under Lord Campbell's Act, the action by the widow was a new action, which would not fail because the deceased's right of action had been barred by prescription, but that in any case this action must be decided by the words of the Canadian Code, which differ from the words of Lord Campbell's Act. The Canadian Code represents the effect of the statute as applied to the previous law of Lower Canada, which, unlike the English Common Law, gave, apart from statute, a right of action to the relatives of a deceased person against any person by whose negligence his death had been caused.

On the 19th of June, 1890, the Court of Queen's Bench, on appeal, unanimously confirmed the last-mentioned judgment of the majority of the Superior Court in Review. The reasons of their decision are not given in full in the Record, but they appear to have decided on the ground that the action by the widow was a new action, which would not fail on account of the action by the deceased being prescribed.

Record, p. 70, s. 12.

On the 22nd of June, 1891, the Supreme Court of Canada, by a majority of four to one, reversed the judgment of the Court of Queen's Bench on appeal, and gave judgment dismissing the appellant's motion for judgment, dismissing the respondents' motions for a new trial and in arrest of judgment, but granting the respondents' motion for judgment *non obstante veredicto*, and ordered and adjudged that the appellant should pay to the respondents the respondents' costs of the action, including the respondents' costs in the Superior Court, also the respondents' costs of appeal to the Court of Queen's Bench and to the Supreme Court.

Mr. Justice Taschereau was the only judge of the majority of the Supreme Court giving judgment adverse to the appellant who gave reasons.

Mr. Justice Taschereau, like Mr. Justice Wurtele, the dissenting judge in the Superior Court in Review, based his decision on the principle that the action given by Article 1056 of the Code is the same as the action given by Lord Campbell's Act, and that the English decisions on that Act apply to the present case.

It is submitted that this is erroneous, as above stated, and it is furthermore to be observed that the English decisions could not have contemplated such a state of affairs as the action of the deceased being prescribed, the period of limitation in England being six years.

The reasons of Mr. Justice Fournier, who dissented from the majority of the Supreme Court, are to be found at pp. 67, 68, 69 and 70 of the Record.

The appellant humbly submits that the judgment of the Supreme Court of Canada of the 22nd of June, 1891, is erroneous and ought to be reversed, and the judgment of the Superior Court and the Court of Queen's Bench restored, for the following amongst other

REASONS.

1. Because any action which Patrick Flynn would have had before his death against the respondents was not prescribed.
2. Because, even if Patrick Flynn's action would have been prescribed, a new and independent

right of action was given to the appellant by Article 1056.

3. Because Article 1056 provides that the only limitation on the appellant's right of action shall be that the deceased should not have obtained indemnity and satisfaction, and that the appellant's action should be brought within a year of the death.
4. Because Patrick Flynn had not obtained indemnity or satisfaction, and the appellant commenced her action within a year of the death.

(Signature of Counsel)

In the Privy Council.

# ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

AGNES ROBINSON . . . . . *Appellant*,

AND

THE CANADIAN PACIFIC RAILWAY COMPANY . . . . . *Respondents.*

## CASE OF THE RESPONDENTS.

1. This is an appeal from a decision of the Supreme Court
Rec. p. 54. of Canada, rendered on the 22nd of June, 1891, reversing a decision of the Court of Queen's Bench (Appeal Side), and ordering judgment to be entered *non obstante veredicto* for the respondents, the defendants in the action.

2. On the 25th of July, 1891, Her Majesty in Council, on the petition of the appellant, granted special leave to appeal from the said decision, their Lordships intimating that upon the argument the parties should confine themselves to the question which alone their Lordships thought of sufficient importance to warrant them in giving special leave to appeal —namely, the question whether the appellant's action was barred by prescription. They intimated that if any question should arise upon an alternative application for a new trial which had been made by the respondents, it must be remitted for decision to the Court below.

Rec. p. 5. 3. The facts material for the purposes of this appeal and which for that purpose are not in dispute, are as follows:— On the 27th of August, 1882, Patrick Flynn, while in the employ of the respondent Company, was ordered by one of the Company's officers to assist in unloading a large iron

machine from a truck. Whilst obeying this order, and in consequence, as the jury found, of the negligence of the respondents and of persons placed by them in authority over him, the machine fell upon and crushed both his legs.

4. On the 13th of November, 1883, and consequently upwards of a year after the date of the alleged cause of action, Patrick Flynn died from the injuries caused by the accident, he not having brought any action against the respondents to recover damages for such injuries.

5. On the 17th of May, 1884, the appellant, who was the widow of Patrick Flynn and had since re-married, commenced the present action against the respondents, claiming damages on her own behalf and also on behalf of an infant daughter by reason of the death of Patrick Flynn, which she alleged to be due to the negligence of the respondents on the occasion aforesaid. Rec. p. 3.

6. The Articles of the Civil Code of Lower Canada upon which the question arises are (so far as material) the following:—

> 1056. "In all cases where the person injured "by the commission of an offence or a quasi-offence "died in consequence, without having obtained in- "demnity or satisfaction, his consort and his ascend- "ant and descendant relations have a right, but "only within a year after his death, to recover from "the person who committed the offence or quasi- "offence, or his representatives, all damages occa- "sioned by such death."
>
> 2262. "The following actions are prescribed "by one year:—(2) For bodily injuries, saving the "special provisions contained in Article 1056, and "cases regulated by special laws."

7. The statute in force at the date of the Code giving the widow and children of a deceased person a right to maintain an action in respect of the injuries causing his death was ch. 78 of the Consolidated Statutes of Canada, of which secs. 1 and 4 are in the following terms:—

> "Sec. 1. Whenever the death of a person has been "caused by such wrongful act, neglect or default, as "would (if death had not ensued) have entitled the "party injured to maintain an action and recover

"damages in respect thereof, in such case the person "who would have been liable if death had not "ensued, shall be liable to an action for damages "notwithstanding the death of the person injured, "and although the death has been caused under "such circumstances as amount in law to felony."

"Sec. 4. Not more than one action shall lie for and in "respect of the same subject-matter of complaint; "and every such action shall be commenced within "twelve months after the death of the deceased "person."

8. Article 1056 is not one of the Articles of the Code which purported to effect any change in the existing law, and was in fact introduced by the Commissioners after the Code had been submitted to the Legislature.

Rec. pp. 21–22. 9. The action came on for trial before Davidson, J., and a jury. The findings of the jury appear at pp. 21–2 of the Record.

Rec. p. 26. 10. The respondents moved the Superior Court of Lower Canada sitting in Review in arrest of judgment and for judgment notwithstanding verdict on the ground that the appel-
Rec. p. 25. lant's claim was barred by prescription and also for a new
Rec. p. 23. trial. The appellant moved that judgment should be entered
Rec. p. 23. in her favour on the findings of the jury. The majority of the
Rec p. 27. Court, consisting of Taschereau, Davidson, Wurtele, J.J., dismissed the several motions of the respondents, Wurtele, J., dissenting, and ordered judgment to be entered for the appellant for the amount awarded by the jury.

11. The decision of the majority of the Court upon the
Rec. p. 29. question of prescription was based upon the ground that this defence was not pleaded in the action, but Taschereau, J., expressed an opinion that the right of action in question was not in respect of corporal injuries and was therefore not within Article 2262. Wurtele, J., held that the point was
Rec. p. 35. open to the respondents and that the action was in fact barred. Their Lordships in giving leave to appeal intimated that the question of whether the point of prescription was open to the respondents on the pleadings was not to be raised on the appeal.

12. The respondents appealed to the Supreme Court of Canada, and the case came on for argument before Ritchie, C.J.,

Strong, Fournier, Taschereau, and Patterson, J.J. The Court (Fournier, J., dissenting) reversed the decision of the Court below upon the respective motions to enter judgment and ordered that judgment be entered for the respondents, holding that the appellant's right of action was barred.

13. The formal judgment of the Court appears at p. 54, the reasons of Taschereau, J., with which the judges, other than Fournier, J., concurred, at p. 55, and those of Fournier, J., at p. 67 of the Record.

14. Taschereau, J., delivering the judgment of the majority of the Court, held that Article 1056 simply gave effect to the provisions of secs. 1 and 4 of ch. 78 of the Consolidated Statutes of Canada above referred to, which is nearly identical in its terms with Lord Campbell's Act. He quoted English and American decisions upon Lord Campbell's Act and similar Acts in America which he held to establish that the widow or other person suing thereunder had no cause of action if the deceased at the date of his death had none. He also held that the action in question was an action for bodily injuries within Article 2262 (2) of the Code. Rec. pp. 55-67.

15. Fournier, J., held that the right of action of the widow and children under Article 1056 was entirely distinct from and independent of the right of action of the deceased person, and that consequently the fact that Flynn's action was barred at the date of his death did not affect the right of the appellant.

16. In the event of the question arising whether the respondents were entitled to succeed before the Supreme Court upon their motion for a new trial, the respondents submit to have that question decided by the Supreme Court if their Lordships so direct.

17. The respondents submit that the Appeal should be dismissed for the following among other

REASONS.

1. Because the alleged cause of action of Patrick Flynn was an action for bodily injuries within the meaning of Article 2262 of the Civil Code, and was at the date of his death barred by prescription.
2. Because Article 1056 of the Civil Code confers no

right of action on the relations of a deceased person where such deceased person had at the date of his death no subsisting cause of action for which he then was entitled to obtain indemnity or satisfaction.

3. Because Article 1056 of the Civil Code did not enlarge the right of action conferred by sec. 1 of ch. 78 of the Consolidated Statutes of Canada, and according to the true construction of that statute the appellant acquired no right of action thereunder.
4. Because the reasons of Wurtele, J., Ritchie, C.J., Strong, Taschereau, and Patterson, J.J., are correct, and the reasons of Fournier, J., are not correct.
5. Because on the admitted facts the appellant has no valid ground of action against the respondents.

(Signature of Counsel)

# APPENDIX II.

By the Rules and Regulations of 13 June, 1853, of the Privy Council: I. An appellant who succeeds in obtaining a reversal or material alteration of any judgment, decree, or order appealed from, is entitled to recover the costs of the Appeal from the respondent, except in cases in which the Judicial Committee may think fit otherwise to direct.

II. The Registrar or other proper officer having the custody of records in any Court or special jurisdiction from which an Appeal is brought to Her Majesty in Council must send by post, with all possible despatch, one certified copy of the transcript record in each cause to the Registrar of the Privy Council, Whitehall; and all such transcripts are registered in the Privy Council Office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from; such transcript to be accompanied by a correct and complete index of all the papers, documents, and exhibits in the cause; and the Registrar of the Court appealed from, or other proper officer of such Court, should omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers; especial care being taken not to allow any document to be set forth more than once in such transcript; and no other certified copies of the record should be transmitted to agents in England by or on behalf of the parties in the suit; and the fees and expenses incurred and paid for the preparation of such transcript should be stated and certified upon it by the Registrar or other officer preparing the same.

III. When the record of proceedings or evidence in the cause appealed has been printed or partly printed abroad, the Registrar or other proper officer of the Court from which the Appeal is brought must send home the same in a printed form, either wholly or so far as the same may have been printed, and

certify the same to be correct, on two copies, by signing his name on every printed sheet, and by affixing the seal, if any, of the Court appealed from to these copies, with the sanction of the Court.

In all cases in which the parties in Appeals shall think fit to have the proceedings printed abroad, they shall be at liberty to do so, provided they cause fifty copies of the same to be printed in folio, and transmitted, at their expense, to the Registrar of the Privy Council, two of which printed copies shall be certified as above by the officers of the Court appealed from; and in this case no further expense for copying or printing the record will be incurred or allowed in England.

IV. On the arrival of a written transcript of appeal at the Privy Council Office, Whitehall, the appellant or the agent of the appellant prosecuting the same is at liberty to call on the Registrar of the Privy Council to cause it, or such part thereof as may be necessary for the hearing of the case, and likewise all such parts thereof as the respondent or his agent may require, to be printed by Her Majesty's Printer, or by any other printer on the same terms, the appellant or his agent engaging to pay the cost of preparing a copy for the printer at a rate not exceeding one shilling per brief sheet, and likewise the cost of printing such record or appendix, and one hundred copies of the same are to be struck off, whereof thirty copies are to be delivered to the agents on each side, and forty kept for the use of the Judicial Committee; and no other fees for solicitors' copies of the transcript, or for drawing the joint appendix, are allowed, the solicitors on both sides being allowed to have access to the original papers at the Council Office, and to extract or cause to be extracted and copied such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet.

V. It shall be the duty of the appellant or his agent to make such application for the printing of the transcript within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the Cape of Good Hope, or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of Her Majesty's dominions abroad; and in default of the appellant or his agent

taking effectual steps for the prosecution of the Appeal within such time or times respectively, the Appeal shall stand dismissed without further order, and a report of the same be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next meeting.

VI. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Lords of the Judicial Committee in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing herein contained shall in any way bar or prevent the Lords of the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the Registrar of the Privy Council may call the agents of the parties before him, and having heard them, and examined the transcript, may report to the Committee as to the nature of the proceedings.

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By Order of 31 March, 1855, the above regulations are subject to any Order or Direction which, in the opinion of the Lords of the Judicial Committee, the justice of any particular case may seem to require.

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By the Rules of 31 March, 1870: I. Every Proctor, Solicitor, or Agent admitted to practise before Her Majesty's Most Honourable Privy Council, or any of the Committees thereof, shall subscribe the following Declaration:—

> We, the Undersigned, do hereby declare, that we desire and intend to practise as solicitors or agents in Appeals and other matters pending before Her Majesty in Council; and we severally and respectively do hereby engage to observe, submit to, perform, and abide by all and every the Orders, Rules, Regulations, and Practice of Her Majesty's Most Honourable Privy Council and the Committees thereof now in

force, or hereafter from time to time to be made; and also to pay and discharge, from time to time, when the same shall be demanded, all fees, charges, and sums of money due and payable in respect of any Appeal, Petition, or other matter in and upon which we shall severally and respectively appear as such solicitors or agents.

II. Every Proctor, Solicitor, or Attorney practising in London, and duly admitted in any of the Courts of Westminster, shall be allowed to subscribe the foregoing Declaration, and to practise in the Privy Council, upon the production of his certificate for the current year; and no fees shall be payable by him on the enrolment of his signature to the foregoing Declaration.

III. Persons not being certificated London Solicitors, but having been duly admitted to practise as Solicitors by the High Courts of Judicature in India or in the Colonies respectively, may apply, by petition, to the Lords of the Judicial Committee of the Privy Council for leave to be admitted to practise in the Privy Council; and such persons, if admitted to practise by an Order of their Lordships, shall pay annually, on the 15th November, a fee of five guineas to the Fee Fund of the Council Office.

IV. Any Proctor, Solicitor, Agent, or other person practising before the Privy Council, who shall wilfully act in violation of the Rules and Practice of the Privy Council, or of any Rules prescribed by the authority of Her Majesty, or of the Lords of the Council, or who shall wilfully misconduct himself in prosecuting proceedings before the Privy Council, or any Committee thereof, or who shall refuse or omit to pay the Council Office fees or charges payable from him when demanded, shall be liable to an absolute or temporary prohibition to practise before the Privy Council, by the authority of the Lords of the Judicial Committee of the Privy Council, upon cause shown at their Lordships' Bar.

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By the Rules of 24 March, 1871: I. All cases, records, and other proceedings in Appeals, or other matters pending before the Judicial Committee of the Privy Council, are to be printed in the form known as DEMY QUARTO.

II. The size of the paper used is to be such that the sheet,

when folded, will be eleven inches in height and eight inches and a half in width.

III. The type to be used in the text is to be pica type, but long primer is to be used in printing accounts, tabular matter, and notes.

IV. The number of lines in each page of pica type is to be forty-seven, each line being five inches and three-quarters or 146 millimetres in length.

The price in England for printing 75 copies in the form herein established is to be thirty-eight shillings per sheet (eight pages) of pica, with marginal notes, not including corrections, tabular matter, and other extras.

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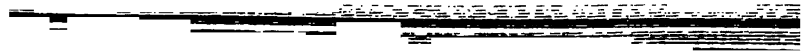
By Order of 26 June, 1873: In Appeals to Her Majesty in Council the solicitors or agents for the party appellant are required to take effectual steps to set down their cases for hearing within a period not exceeding twelve months from the date of the arrival and registration of the transcript in England.

The Registrar of the Privy Council is to report to the Lords of the Judicial Committee the names of the parties and dates of the Decrees in Appeals in which no effectual steps have been taken within the aforesaid periods of time to set down the case for hearing; and the Judicial Committee may call upon the appellant or his agent in such cases to show cause why the said Appeal or Appeals should not be dismissed for non-prosecution, and (if they shall so think fit) may recommend to Her Majesty the dismissal of any such Appeal, or give such directions therein as the justice of the case may require.

But nothing in the present Order shall prevent the dismissal of an Appeal under the 5th of the Rules of 13 June, 1853, in cases to which that Rule is applicable.



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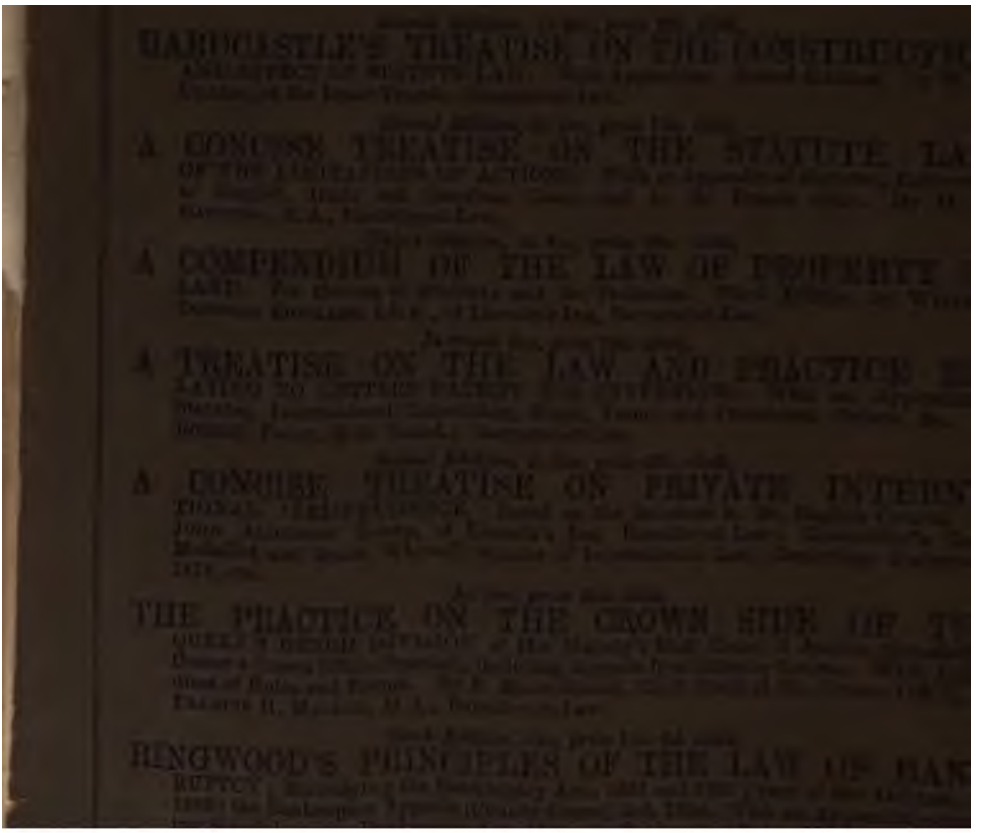

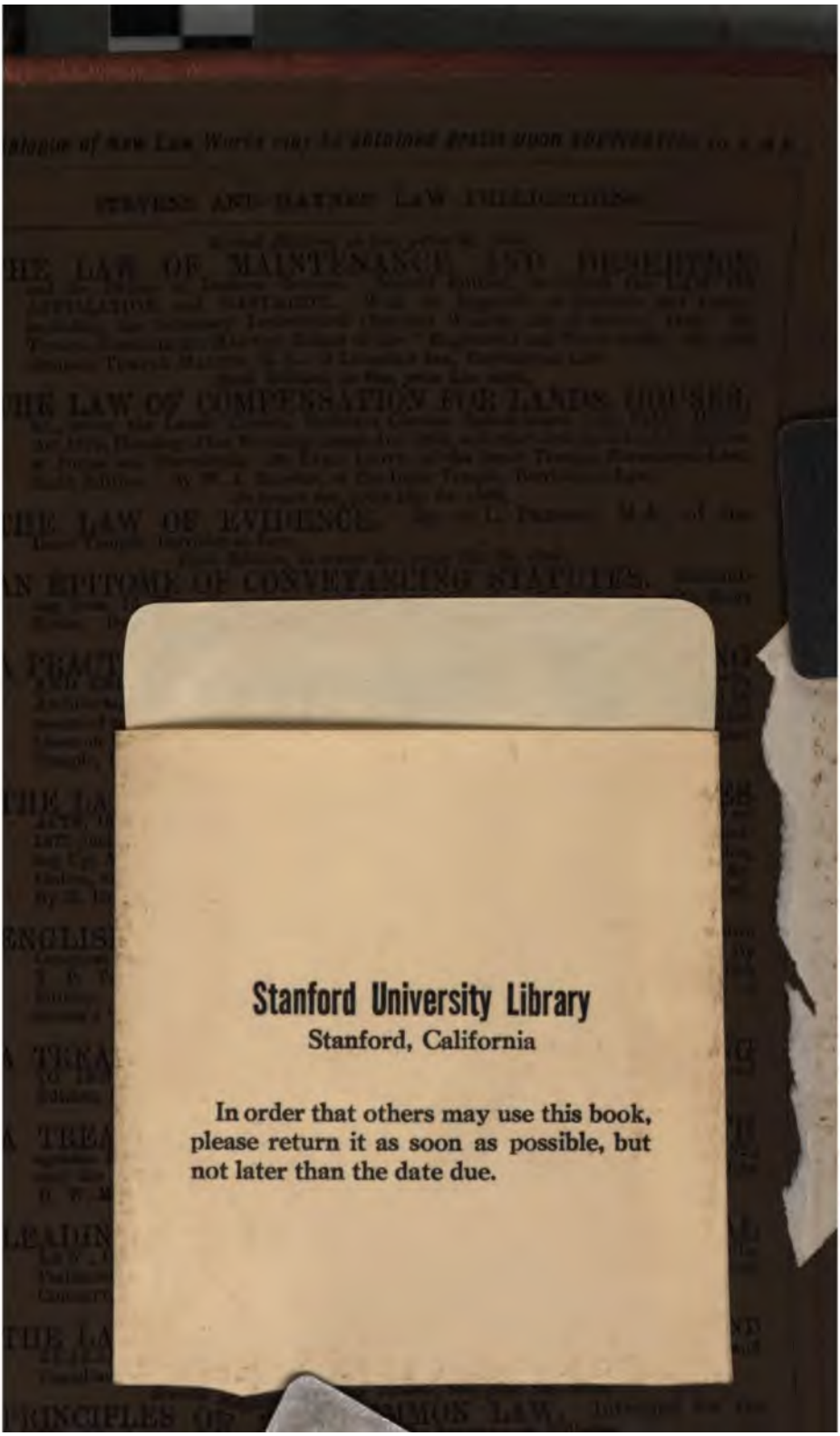
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